United States Court of Appeals
for the Second Circuit

APPENDIX

ORIGINAL

77-7104

United States of Appeals

For the S ircuit

STATES COURT OF APPEALS
FILED
APR 18 1977
A. DANIEL FUSARO
SECOND

DAVID E. ROLF,
Plaintiff-Appellant-Cross-Appellee,

against

BLYTH, EASTMAN DILLON & CO., INC.,
and MICHAEL STOTT,
Defendants-Appellees-Cross-Appellants,

and

AKIYOSHI YAMADA,
Defendant.

On Appeal from an Order and Judgment of the United States District Court for the Southern District of New York

---

JOINT APPENDIX

VOLUME III OF THREE VOLUMES

(Pages JA650 to JA965)

Silverman & Harnes
Attorneys for
Plaintiff-Appellant-Cross-Appellee
75 Rockefeller Plaza
New York, New York 10019
(212) 765-7884

Breed, Abbott & Morgan
Attorneys for
Defendants-Appellees-Cross-Appellants
One Chase Manhattan Plaza
New York, New York 10005
(212) 676-0800

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

PAGE

Docket Entries ..... JA 1

Complaint ..... JA 5

Answer of Defendants Blyth, Eastman Dillon & Co., Inc. and Michael Stott ..... JA 11

Exhibit A—Authorization ..... JA 15

Opinion of Pierce, D. J. ..... JA 17

Final Judgment ..... JA 77

Notice of Appeal ..... JA 79

Notice of Cross-Appeal ..... JA 79A

Excerpts from Transcript of Trial

Plaintiff's Witnesses:

David E. Rolf:
- Direct ..... JA 80
- Cross ..... JA 95, JA 174
- Redirect ..... JA 211
- Recross ..... JA 229

Martin J. Whitman:
- Direct ..... JA 112, JA 245
- Cross ..... JA 264
- Redirect ..... JA 359
- Recross ..... JA 366

Akiyoshi Yamada:
- Direct ..... JA 368
- Cross ..... JA 416
- Redirect ..... JA 568
- Recross ..... JA 581

PAGE

Catherine Haywood:

Direct .... JA 583
Cross .... JA 590

Michael A. Stott:

Direct .... JA 592
Cross .... JA 644
Redirect .... JA 841

John P. Cione:

Direct .... JA 844
Cross .... JA 899

David E.Rolf

vs. 73 Civ. 2967

Blythe Eastman Dillon Co. Inc.,
Akiyoshi Yamada & Michael Stott

New York, New York.
July 12, 1976 - 10:35 A.M.

(Trial resumed.)

MICHAEL STOTT resumed.

CROSS-EXAMINATION (continued)

BY MR. SILVERMAN:

Q Mr.Stott, when we left off Thursday you had finished your direct examination and I had started cross-examination.

I asked you whether in your first telephone conversation with Dr. Rolf, if Dr. Rolf had asked that his account be referred to a partner or a security analyst at Eastman Dillon and you said no, and then I believe I read from your deposition that was taken in September 1974, where you recalled that in that conversation Dr.Rolf had asked for a partner or a security analyst at Eastman Dillon, is that correct?

A Yes, you gave me the paper to read from.

Q Was your testimony at your deposition in which you recall that he asked for a partner or secuity analyst true or not?

A Was my testimony in my deposition --

Q True. Were you telling the truth when you test fied in your deposition?

A No. As I explained to you on Thursday, the question in the deposition, the account was handled by a partner and that was the subject of confusion to me.

Q When you said in your deposition that he asked for a partner, a security analyst that wasn't the truthful answer, is that correct, yes or no?

A That's correct.

Q Did Eastman Dillon in 1969 have an investment advisor?

A You mean a department?

Q An investment advisory service.

A Not to my knowledge.

Q Did you have a subsidiary that handled discretionary accounts at Eastman Dillon?

A Nobody in Eastman Dillon is allowed --

Q Did you have an investment advisory subsidiary in 1969 in Eastman Dillon that handled discretionary accounts, yes or no?

A Not to my knowledge, sir.

Q During the course of a subsequent conversation with Dr. Rolf, he informed you that he had retained the services of Mr. Yamada, is that correct?

A That is correct.

Q During the course of that conversation did Dr.Rolf tell you that all trades would go through you in Eastman Dillon?

A Yes, I believe he did.

Q Did Mr. Yamada subsequently confirm that all trades would go through you at Eastman Dillon?

A I don't recall that. I don't recall whether he did or he didn't, sir.

Q Did you have a chance to read your deposition between your direct testimony and today?

A Yes, sir.

Q Did you have an opportunity to review your deposition before you testified on direct?

A Yes, I did.

Q I am going to read from page 18 of your deposition, line 5 "Did you confirm it with Mr. Yamada," and that referred to the fact Dr. Rolf had retained Mr. Yamada, and your answer was, "Mr. Yamada called a day or so later and said he wanted to do some business and I sent him up the papers that are required before he can issue orders and they have to be signed by Dr.Rolf and whoever Dr.Rolf indicates is going to be placing the orders

"Q Was there any understanding that orders would be placed through Eastman Dillon?

"A If at all possible.

"Q With whom did you have that understanding?

"A With Dr.Rolf.

"Q And also with Mr. Yamada?

"A Well, he told Mr. Yamada.

"Q To place orders wherever possible with Eastman Dillon and you?

"A With EastmanDillon and, yes, with me."

Were those answers correct?

MR. KELLY: Would you read the balance?

"Q Did Mr. Yamada ever tell you directly or indirectly that as the result of your recommending Dr.Rolf to him you could expect brokerage business from them of his clients?

"A Absolutely not."

MR. SILVERMAN: Your Honor, I don't think that relates to my question which is whether Yamada told him to get the brokerage commissions.

Q Were the answers that you gave in your deposition true when you gave them?

A Can I read the deposition? Is that possible?

Q You certainly can, Mr.Stott.

A Thanks. What line did you start with?

THE COURT: Line 5.

A What I said there, as I read that, what I said there is Dr. Rolf told Mr. Yamada that the business was to be placed with Blyth Eastman Dillon.

Q Did Mr. Yamada ever confirm it to you that if at all possible you were to get the business, yes or no, Mr.Stott?

A Not to my recollection.

Q You never had a conversation with Mr. Yamada that you would get the business from that account?

A Not to my recollection, sir.

Q Dr. Rolf told you you were to get the business and you never confirmed it with Mr. Yamada. Is that what youare saying?

A Yes, sir.

Q When Dr. Rolf told you that you were to get all of the brokerage commissions from his account, did he tell you what he expected you to do for those commissions?

A No, he didn't, sir.

Q Did he tell you that he wanted you to supervise the account?

THE COURT: Excuse me a minute. I am not sure it has been established that that is what he said. As I understand it according to the deposition, plaintiff told Mr.Stott that all trades were to go through Mr. Stott and Eastman Dillon if at all possible.

THE WITNESS: There was nothing said about --

THE COURT: Is that correct?

MR. SILVERMAN: That's right.

"Was there any understanding that orders would be placed through Eastman Dillon," and the answer was, "If at all possible."

THE COURT: I understood the witness to have said yes, that was his answer at the time and that was correct at the time.

THE WITNESS: Yes, sir.

Q Did Dr. Rolf tell you what he expected you to do in return for receiving commissions?

A Dr. Rolf never referred to the commissions. Dr. Rolf referred, because he had been dealing with Eastman Dillon he would like the account to remain there.

Q Did he tell you that he wanted you to supervise the account?

A He didn't tell me anything of the sort.

Q Did he tell you he wanted you to watch closely what was going on in the account?

A I believe he referred to that in lettters later.

Q Initially did he tell you he wanted you to watch closely?

A No, sir.

Q Did he tell you that he wanted you to monitor the account?

A You are talking initially?

Q Yes.

A No, sir.

Q What was his reason for wanting you to get the commissions, Mr.Stott? Were you related to him?

MR. KELLY: Objection to the question, your Honor.

THE COURT: The last portion is stricken.

MR. KELLY: It was asked, your Honor, what was the reason of Dr. Rolf. I don't see --

THE COURT: Yes, sustained to that extent. Reframe it, please.

Q What did you believe your duties were to be, vis-a-vis Dr.Rolf's account?

A I believe my duties -- when the account was assigned to me by the firm I believed that my duties pertaining to Dr. Rolf's account, after he signed the forms giving Mr. Yamada complete power of attorney over the account, I believe my duties were to see that the monthly statements were in proper order, that the confirmations that went to, I believe, Mr. Yamada -- I don't know who got the confirmation, if Mr. Yamada got a copy --that they went out correctly, there was no errors in them. That orders given by Mr. Yamada were to be entered in the proper fashion and they got the best executions possible and to check monthly statements and things of that nature.

Q You thought your functions were that of a bookkeeper, is that correct?

MR. KELLY: I object to the question.

THE COURT: I will allow that.

A Yes, basically, a bookkeeping operation.

Q Did you think that EastmanDillon had a better bookkeeping operation than any other firm on the street and that is why you were being preferred?

A Well, I believe we have what I consider the best office, best back office on the street.

Q I am going to show you Plaintiff's Exhibit 1 in evidence, which is a letter dated April 15, 1970, to you, and I will ask you whether in fact you recall receiving Exhibit 1.

A Yes, I do.

Q The first line says, "Since you work closely with Aki", doesn't it?

A Yes, sir.

Q Did you ever make a written reply to Plaintiff's Exhibit 1?

A No, I didn't.

Q Did you reply in any other fashion?

A Yes, I did.

Q How did you reply?

A In one of the subsequent phone conversations with Dr. Rolf -- if you remember I had just sent him a matter also, and in one of the subsequent phone conversations with Dr.Rolf I told him that I didn't work closely with Mr. Yamada.

Q You knew that you were calling Mr. Yamada every single day, didn't you, when you told him you weren't working closely with him?

A I was calling him every single day to give him a buy-sell list.

Q Were you calling him every single day?

A Either myself or my secretary, yes, sir.

Q How many other people did you call every single day?

A Oh, about 18 to 20 I called every single day.

Q In your deposition, which was taken in September 1974, you were asked the following questions and gave the following answers, page 61:

"Q Do you recall having any change in your attitud towards Dr. Rolf's account after you read what had been marked as Stott Exhibit 1?

"A Oh, I suppose I looked at the monthly statements every month very carefully and I suppose I continued to do so.

"Q Did you continue to discuss it with Mr. Yamada?

"A I don't recall. I didn't talk with Mr. Yamada so much. Only if he called in for an order. I didn't call an order in."

Was that testimony true when given?

A Could I see that?

(Handed to witness.)

A That is basically true.

Q That answer is true?

A Well, I mean with an exception.

Q Did you call him every single day?

A I called or my secretary called. I told you before, in my direct testimony, whether I reached Mr. Yamada or not, or his secretary, in the morning to give him that buy-sell list that we give to all institutional clients, sometimes Mr. Yamada would answer the phone, sometimes his secretary would. Mr. Yamada would call with orders.

Q Did you call him some days more than once?

A Well, if Mr. Yamada was putting in orders, yes, I would call back more to give him the executions and the prices.

Q On page 10 of your deposition, beginning line 18:

"Q In 1969, how many times did you see him" -- and that refers to Mr. Yamada.

"A Well, you said phone to -- oh, personally I saw him maybe six times on the phone. Oh, gosh, I don't know. Gee, it's going to be a little bit of a guess. I don't remember. Maybe 20 or 30 times.

"Q That would be in the year 1969?

"A I would say totally."

WEre those answers true when given that you called him twenty times throughout the period?

A That is obviously wrong here, but at the time I didn't have access -- had thought this thing out as much as now, Mr. Silverman.

Q On page 15, of your deposition, I asked you the

the following question:

"Q Prior to your appearing here for your deposition did you review records pertaining to Dr. Rolf's account with Eastman Dillon?

"A Did I review? Yes."

Was that testimony true when given, Mr.Stott?

A Yes, it was.

Q Is it your testimony that when the doctor wrote to you and said since you were close with Aki, you told him you didn't work closely with Aki?

A In one of my subsequent conversations with him, yes, sir.

Q 'If you said that, the message didn't get across to the doctor, did it, because he wrote you a second letter in which he said --

MR. KELLY: Objection, your Honor. Argumentative

THE COURT: Sustained.

Q Mr.Stott, I show you Plaintiff's Exhibit 2 in evidence and ask you if you received that letter, the original of Exhibit 2.

A Was there something attached to this?

Q Yes, there was, Mr.Stott. I am going to show you Plaintiff's Exhibit 3. Did you receive that along with it?

A Yes, I did, sir.

Q Did you make a written reply to Plaintiff's Exhibit 2?

A Not to my -- you mean to the combination of these?

Q Yes, Exhibits 2 and 3. Did you make a written reply to Dr. Rolf?

A I don't believe I did, sir.

Q Did you reply to him on the telephone?

A I believe I did, sir.

Q Did you ask him why he was giving you Mr. Yamada's program if you were only a bookkeeper and taking orders and didn't he remember you were only taking orders?

A I believe I stated that Dr. Rolf should take up these matters with Mr. Yamada, that I had absolutely no say as to what was purchased and sold in the account.

Q He was a man who you recommended to Mr. Yamada who writes you a letter saying there is five million dollars worth of transactions in my account --

A That is a letter to Mr. Yamada.

Q He enclosed it to you. He tells you about his losses and you say to him go take it up with Mr. Yamada. Is that your testimony --"I am just a bookkeeper"

A Yes, sir.

Q Didn't you want to keep that account?

A Did I want to --

Q Keep Dr. Rolf's account.

A Sure. It was an account of the firm.

Q When a customer calls and says he wants you to do something, don't you say "I'll do precisely as you instruct me to do,"if you want to keep the account?

A Where did he say for me to do anything in this letter?

Q When he did give you instructions in the letters did you do precisely what he asked you to do?

MR. KELLY: I will object to that question.

THE COURT: Yes, too general.

Q He asked you in Plaintiff's Exhibit 2: "Any assistance you can provide will be greatly appreciated."

Did you give Dr. Rolf --

A That is a pretty general statement.

Q Can you answer yes or no, did you give him any assistance?

A Sure. I watched his account, I checked his monthly statements, checked to see orders enteree by Mr. Yamada were placed properly. That type of thing.

Q Did you spend more than four or five minutes a month on his monthly statement?

A About four or five minutes a month on his particular statement, that's correct.

THE COURT: Could you tell me what you mean by checking to see that orders placed by Mr. Yamada were properly executed? What does that mean?

THE WITNESS: In other words, your Honor, when an investment advisor or a client of the firm calls in and tells me to buy, let's say, 100 shares of Exxon, and I enter an order to buy 100 shares of Exxon, you write a ticket out, buy 100 and you put the ticker symbol down and you enter in the client's account number, you never put the cient's name on. It is all done by account number. You enter the order and if it comes back that you bought the stock, well, let's say 104, and the ticket comes back that you bought it at 101, obviously something is wrong and you have to see that it is corrected.

THE COURT: What about the instances where the orders were not placed through your firm, but nevertheless the confirmations were sent to your firm and I gather Eastman Dillon was the custodian at least of the securities

THE WITNESS: That's right.

THE COURT: What would you do there to see that everything was done properly?

THE WITNESS: A letter would usually come with the confirmation, signed by either Dr. Rolf or Mr. Yamada, telling me to accept into the account, telling our firm to accept into the account whatever securities were going to be delivered from another broker, or in the case deliver from the account whatever securities were to be delivered to another broker.

THE COURT: These would usually be accompanied by a letter from Mr. Yamada or plaintiff?

THE WITNESS: Yes, your Honor.

THE COURT: With instructions?

THE WITNESS: Yes, your Honor.

THE COURT: Would it be a form letter form Yamada or some other kind of letter?

THE WITNESS: It would basically be a letter, Dear Mr. Stott, kindly deliver to X, Y, Z, brokerage firm, you know, whatever particular security or, or Dear Mr. Stott, please accept into the account from Y, X, Z, brokerage firm whatever shares were coming in against the payment of such and such amount of money.

THE COURT: For that the firm received commissio

THE WITNESS: Not on things purchased outside the firm.

THE COURT: First of all, the things purchased in the firm, the firm received commission.

THE WITNESS: Yes, sir.

THE COURT: And you received commission?

THE WITNESS: A percentage, yes, sir.

THE COURT: Was the percentage any different if you had no supervisory concern of the account than it would be if you did have supervisory --

THE WITNESS: Your Honor, could you --

THE COURT: Do I understand you correctly to have said that it was not your responsibility or Eastman Dillon's to supervise the account of the plaintiff?

THE WITNESS: When I said referring to supervising, the advisory, to advise the account as to what to purchase and sell. We have a form that has to be signed, your Honor, when an investment advisor handles an account and on that form it states that the investment advisor or whoever the client is given the power of attorney has total discretion as to the purchase and sales of the account and as to the taking of moneys in and out of the account, and that particular point, your Honor, at that point we become the custodian only for the security.

THE COURT: Do you charge a different commission for being a custodian only than you would charge if you were more than a custodian only, if you had more responsibility? Is the commission any different?

THE WITNESS: No, it is a standard New York Stock Exchange commission.

THE COURT: That is true of Eastman Dillon?

THE WITNESS: Yes, your Honor.

THE COURT: And true of the commission you would have received?

THE WITNESS: Yes, your Honor.

THE COURT: Where the shares were purchased, say, on Mr. Yamada's order by your own firm, you would effectuate the purchase?

THE WITNESS: Yes.

THE COURT: And you would receive the commissions the firm and yourself, correct?

THE WITNESS: Yes, your Honor.

THE COURT: What about where the purchase was made through some other firm, but the securities and the confirmations and so forth came to your firm for custodian purposes?

THE WITNESS: They would receive the commissions your Honor.

THE COURT: Would Eastman Dillon receive any commissions in connection with the securities coming there for whatever purpose, custodial purposes or otherwise?

THE WITNESS: No, sir.

THE COURT: Would you receive any commission?

THE WITNESS: No, sir.

THE COURT: So it was merely, in a sense, a courtesy, if you will, to receive them as part of Dr.Rolf's account even though they were purchased through some other firm?

THE WITNESS: That is correct.

THE COURT: There was no additional charge made for that?

THE WITNESS: No, your Honor.

THE COURT: So all of these stocks that we have talked about, for example, Natomes, Teledyne, International Funeral Services, Reading & Bates, none of which were recommended by you, as I understood your testimony, but whic were purchased at Mr. Yamada's orders, and which came into the doctor's account at Eastman Dillon for custodial purposes, no commission was received by your firm?

THE WITNESS: I don't know -- Natomes, was that purchased by Eastman Dillon?

THE COURT: That is a good point.

MR. KELLY: I think it was.

THE COURT: Let me find another one.

MR. KELLY: I think that is true of the others, your Honor.

THE COURT: They were purchased but not recommended by Mr.Stott?

MR. KELLY: That is correct.

THE WITNESS: In other words, your Honor, if you called me up and bought 100 shares of something, but it was your idea, I had nothing to do with it, I would still receive a commission for executing the order.

THE COURT: Yes. What about GPI. That was not purchased through Eastman Dillon, was it?

THE WITNESS: Your Honor, I don't have the --

MR. SILVERMAN: It was, your Honor.

MR. TESSLER: The initial purchase was a new issue, purchased elsewhere and there was a subsequent issue elsewhere in the market and I believe the testimony is the subsequent purchase was made through Eastman Dillon.

MR. KELLY: It was bought elsewhere, your Honor and was never purchased by Eastman Dillon in the account, Delanair.

THE COURT: What about Funeral Homes?

MR. KELLY: Outside.

THE COURT: M.H. Studios.

THE WITNESS: I believe outside, your Honor.

THE COURT: Those three were purchased through some other firm. Thereafter, upon that being effectuated the confirmation came through Eastman Dillon and the securities became a part of the custodial account at Eastman Dillon.

THE WITNESS: Became part of Dr. Rolf's account, yes, your Honor.

THE COURT: Did Eastman Dillon get any commission for any of that or did you get any commission for any of that?

THE WITNESS: No, your Honor.

THE COURT: You testified you first called Dr. Rolf, at the very beginning, you stated you wanted to handle his account. Now, what did you mean by handle the account?

THE WITNESS: IN other words, I felt I was well enough qualified to advise Dr. Rolf as to what should be, you know -- helpful to him in what should be purchased and sold in his account. I felt at the time I had been in the business 12 years and I felt I had experience.

THE COURT: And he felt otherwise, is that it?

THE WITNESS: Yes, your Honor.

THE COURT: And it was thereafter that Yamada's name was recommended?

THE WITNESS: Yes, he saw some other investment advisors, Mr.Geddes and Yamada.

THE COURT: Does that mean after it didn't work out the way you had suggested after handling Dr.Rolf's account was concerned, that thereafter you never really handled his account?

THE WITNESS: For the lack of a better word, just mechanical, as far as buy X, Y,Z stock, or sell the stock. I just took orders from the investment advisor.

THE COURT: Would it be correct to say that from the time you first talked with him, sought to have him allow you to handle his account, and found that he was not willing to have that happen, that from then until the middle of 1971, you really never handled his accounted in the conventional sense?

THE WITNESS: No. In other words, when Dr. Rolf signed -- what's the word I am looking for --

THE COURT: Trade agreement?

THE WITNESS: Trading authorization, some time the first days of May, I had nothing to say as to giving advice.

THE COURT: I understand that. You had used the words you wanted to handle his account and he declined that.

THE WITNESS: That's correct.

THE COURT: You didn't get what you were after because of that decision by the doctor?

THE WITNESS: That's correct.

THE COURT: If you had gotten what you were after, what you meant was you wanted to act as what, his registered representative?

THE WITNESS: That is correct, registered representative.

THE COURT: That never really happened then between you and Dr. Rolf?

THE WITNESS: That I acted as his registered representative as far as advising him, no.

THE COURT: All right, Mr.Silverman.

BY MR. SILVERMAN:

Q The Judge asked you about securities that were purchased outside the account. These securities were delivered in to Eastman Dillon, is that correct?

A That is correct.

Q And Eastman Dillon would pay for the securities is that right, delivery against payment?

A I believe in some cases. In some cases they were delivered free.

I : In the overwhelming majority of cases would you agree you paid for them?

A Upon instructions, yes.

Q When you had the securities in Eastman Dillon's account and they were sold, who got the brokerage commissions on the sale, the house that bought them?

MR. KELLY: Sold where,your Honor?

Q When you had securities in your account and there was an order to sell them --

A My acconnt?

Q Sorry, Mr.Stott. Let me start over again. When securities were purchased in another brokerage firm and delivered in to Eastman Dillon and they were in Eastman Dillon's custody and then there was an order for a sale of those stocks, who got the commission on the sale by and large?

A In other words, if we were asked to sell the security in Dr. Rolf's account at Eastman Dillon?

Q That's right.

A Eastman Dillon would get a commission.

Q And on the overwhelming majority of stocks purchased outside the firm and delivered in and subsequent resold who got the commission, Eastman Dillon or the outside broker?

MR. KELLY: I object, your Honor, to the characterization with respect to the predominance. It becomes a question of specifics. Which ones?

THE COURT: Reframe it.

Q When a security was purchased at another brokerage firm and delivered in to Eastman Dillon and then there was an order to sell the stock, did you deliver the security to the firm that had purchased it and let that firm sell it and get the commission or did you sell it and get the commission?

A If I was instructed to deliver to the other firm, I would. If I was instructed to sell it at Eastman Dillon, I would sell it there.

Q What was the usual procedure, Mr. Stott? We have all the --

MR.KELLY: I object. There was no usual procedure.

I object. You are testifying, Mr.Silverman.

THE COURT: Just a moment. No colloquy.

MR. SILVERMAN: Sorry, your Honor.

THE COURT: Just a moment. Let's establish the general proposition first.

Q Was there a usual procedure when there was a sale of securities in Eastman Dillon's account and was that usual procedure that the sale would be made by Eastman Dillon? Yes or no, Mr.Stott?

MR. KELLY: I object to the question, your Honor, unless we are talking about securities purchased elsewhere or we are talking about securities purchased in the account or both. Whichever one of the three ways, but one or the other, so we know. Securities were purchased in the Eastman Dillon account, they --

THE COURT: Take it each way.

Q When securities were purchased by Eastman Dillon and they were in Eastman Dillon's custody and you paid for them and then there was a subsequent sale of the stock, was the sale usually, was it usual procedure for the sale to be made by Eastman Dillon?

A If they were purchased at Eastman Dillon, yes, usually.

Q If the securities were purchased outside Eastman Dillon, but delivered in to Eastman Dillon against payment and subsequently sold, was the usual procedure that the stock was sold by Eastman Dillon, yes or no?

A I guess I would have to say usually.

Q Do you know of a single solitary exception when Eastman Dillon had custody of a stock that it transferred that stock out for sale to another brokerage firm when there was to be a sale?

A We shipped stocks out --

THE COURT: In Dr. Rolf's case.

Q In Dr. Rolf's account.

A We transferred stocks out in Dr. Rolf's account on different occasion. What the disposition of the stocks was, I do not know.

Q You testified as to plaintiff's Exhibit 3. I am going to show you Plaintiff's Exhibit 4 and ask you if you recall receiving the original of Exhibit 4 and if your answer to that is yes, whether the handwritten portion which says "Remember, you are my man in New York. Please keep the program on target." Was that on the exhibit when you received it?

A Yes,it was, sir.

Q Did you make a written reply to Plaintiff's Exhibit 3 in evidence when you received it?

A Plaintiff's 3 or Plaintiff's 4?

Q Plaintiff's 4, I am sorry. Did you make a written reply to Plaintiff's 4?

A Not to my recollection.

Q Did you believe that when the doctor said "You are my man in New York, please keep the program on target" that he wanted you to add up the debits and credits? Is that what you thought he meant?

A To the best of my knowledge, yes.

Q Is it your testimony that when you read the doctor had referred to you as his man in New York and to keep the program on target that all he wanted you to do is add up the debits and credits, Mr. Stott?

A That was basically it, yes, sir.

Q Did you tell that to Dr. Rolf?

A I told him.

Q What did Dr. Rolf say to you when you said --

A He said, "Oh" --

Q On numerous occasions Dr.Rolf questioned you about the account and on numerous occasions you said you ar a bookkeeper and on each of those occasions he said, "Oh"?

A What happened with Dr. Rolf, when I would get a letter from Dr.Rolf on the next phone call I would talk to him and said I had received his letter, and what do you mean by this or that, and he would say I talked to Mr. Yamada about this or that, and then, you know, I might refer to something else in the body of the letter and say to him, "Doctor, when you signed that piece of paper in Eastman Dillon, Mr. Yamada is the man you have to talk to and stay in touch with."

Q I want to know what Dr. Rolf said when you said

A "Thank you, I'll do that."

Q He wasn't getting the message, was he, Mr.Stott

A I told you in April when I received the letter from Dr. Rolf, and then later in the year we started to give Dr. Rolf the quotes he asked for, then I would talk to Dr. Rolf as per his instructions to give him quotes on over-the-counter securities or my secretary would, and we were talking and say Aki is doing that,and he is doing that, and that's the words he used, and I said stay in close touch with Mr. Yamada, he is your fellow on the account.

Q I am going to show you Defendants'. Exhibit H in evidence, and I will ask you whether you received the original of that exhibit.

A Yes.

Q When Dr. Rolf said to you, in Exhibit H "I really need a man in New YOrk whom I can really trust," did you believe that he meant he needed a man in New York who can add up the debits and credits, Mr. Stott?

A I consider that pretty truthworthy, yes.

Q Someone who adds up the debits and credits?

A Yes.

Q Did Dr.Rolf call you on numerous occasions to question what was going on in his account?

A No, he didn't. I would be calling Dr.Rolf to give him his over-the-counter quote. He didn't --

Q If I tell you that Dr.Rolf testified that he did call you on numerous occasions to complain about his account, would you still deny that he called you?

A Yes, I would.

Q And each time you spoke to Dr. Rolf on his account you said to him, go speak to Mr. Yamada?

A Basically, yes.

Q And Dr. Rolf kept writing you and you kept saying, I am a bookkeeper --

A That's it.

MR. KELLY: I object to this line of questionin your Honor.

THE COURT: Sustained.

Q I show you Plaintiff's Exhibit 5 in evidence and ask you if you received the original of that exhibit.

A Yes, I did.

Q And when Dr. Rolf wrote to you, in Plaintiff's Exhibit 5, and said "Please keep your pulse on the situation and also keep me informed," did you believe he was referring to adding up the debits and credits, Mr.Stott?

A I believed that, yes, I did.

Q And nothing else?

A Nothing else. Dr. Rolf --

Q All right, you have answered my question.

Q You testified that Dr.Rolf told you, you were going to get, if at all possible, the commissions in his account that would be generated through purchases and sales?

A Did I testify that? I don't believe I did. I believe I testified Dr.Rolf said the account would remain at Eastman Dillon because he had been there for yea

Q Did he say you would get the commission?

A He never referred to commission, to my knowledge.

THE COURT: Did you get the commission?

THE WITNESS: On trade done at Blyth Eastman Dillon.

THE COURT: Is that your question, Mr. Silverma Mr. Stott is saying on trades done at his firm the firm got commission and he got commission.

MR. SILVERMAN: That is part of it, your Honor. The second part is:

Q Did Dr. Rolf tell you that you at Eastman Dillon would get the credit for the commissions?

A Dr. Rolf, I don't believe said that. If an account is given to me by the firm and assigned to me, I automatically receive the commission.

Q You you say Dr.Rolf didn't say --

A Not to my recollection.

Q On your deposition, I will read it again, page 18, beginning at line 18:

"Q To place orders wherever possible with Eastman Dillon and you?

"A With Eastman Dillon and yes, with me."

Was that a true answer when given?

MR. KELLY: I object to that question, your Honor. It doesn't contradict what he said at all. It is no more than a reiteration than what he has just said and to read it as though it were a repudiation of what the witness said, I believe it is unfair.

THE COURT: Page?

MR. SILVERMAN: Page 18, line 18. I will go ba to line 11 so the context of the critical answer will more easily appear.

"Q Was there any understanding that orders would be placed through Eastman Dillon?

"A If at all possible.

"Q With whom did you have that understanding?

"A With Dr. Rolf.

"Q And also with Mr. Yamada?

"A Well, he told Mr. Yamada.

"Q To place orders wherever possible with Eastman

Dillon and you?

"A With Eastman Dillon and yes, with me."

My question, Mr. Stott is, were those answers truthful when made?

A Well, looking back on it now, there were so many questions asked of me on that day, I thought it was truthful at the time and evidently, you know, it is not. Maybe I am using the wrong words. In other words, I was confused at the time --

MR. KELLY: Your Honor, may I ask the witness be permitted to read the material?

THE COURT: Sure.

MR. KELLY: It makes no reference to commission at all.

THE WITNESS: Where did we start from?

MR. KELLY: Line 11.

THE COURT: Read it out loud.

THE WITNESS: "Was there any understanding that orders would be placed through Eastman Dillon?

"A If at all possible.

"Q With whom did you have that understanding?

"A With Dr. Rolf.

"Q Also with Mr. Yamada?

"A Well, he told Mr. Yamada.

"Q To place orders wherever possible with Eastman Dillon and you?

"A With Eastman Dillon and yes, with me."

Q Do you get commissions on orders, Mr.Stott?

THE COURT: Wait a minute. You can ask that question later on. There may be an unanswered question.

Q Was that testimony true when given?

A I don't understand true when given.

Q When you said that, was it true, Mr. Stott? Was that a truthful answer when you said it?

A Yes.

Q So then Dr. Rolf did tell you that you were going to get the commission?

MR. KELLY: I object, your Honor. That is exactly what I think is so unfair.

THE COURT: Change the word "commission" to "orders", please.

Q Dr. Rolf told you you were going to get the orders, you personally?

A When he refers to Blyth Eastman Dillon, I am acting as their --

Q "Yes, with me" means you were going to get the orders?

A If the orders were made through Eastman Dillon, yes.

Q He specifically mentioned you, Mr.Stot. Let's not fend.

A Not to my knowledge.

Q When you efect an order for the purchase or sale of securities, do you get a commission?

A If the account is assigned to me, yes.

Q Did you in fact get commissions from this account?

A Yes.

Q Was your share of Eastman Dillon's commissions, the gross commission one-third?

A I believe it was,yes.

Q So that on every commission, any confirmation that we see where Eastman Dillon's commission is recorded, you got one-third, is that right?

A Yes.

Q And that was for reading over the monthly statement for four or five minutes each month? Is that what you believed you were to do?

A And entering, purchase and sales orders, calling back with the executions with the prices, to see confirmations were sent out to the client correctly, yes.

Q When you looked over the monthly statements, did you notice that there were any stocks which somebody might consider to be junk?

MR. KELLY: I object to that question, your Honor.

THE COURT: I will allow it,

A No.

Q Do you ever use the word "junk" to describe certain highly speculative, very very low quality stock?

A I really don't know if I do or don't.

Q What word do you use when you see a stock like Hair Extension centers. You don't call it a blue chip, do you? What do you call it, Mr.Stott?

A Knowing what I know today about Hair Extension, I wouldn't, no.

Q Would you have called it a blue chip in the 196 Hair Extension lenters?

A I had no reason to believe there was anything wrong with the stock in 1969 when the stock was put in Dr. Rolf's account.

Q That stock was purchased from you at Eastman Dillon, is that right?

A I said when it was put in Dr.Rolf's account.

Q How many thousand shares were put into Dr. Rolf's account, do you recall?

A No. If I had a record in front of me, I could tell you.

Q What did you do when you purchased Hair Extension Centers? Did you put in a market order?

A I really don't know whether it was a market order or limited order. I am not sure.

Q Could you put in a market order for a thinly-traded stock? Do you think you can put in market orders for thinly-traded stocks, Mr. Stott?

MR. KELLY: I object to that question at this point, your Honor, first of all because I don't understand it. The simple fact is --

THE COURT: As to form, sustained.

Q When you are trading in over-the counter stocks is the usual procedure to put in a market order where there is a substantial quantity involved, several thousand shares?

A It depends who has given you the order and what he has told you.

Q On Hair Extension Centers, were you given directions as to where you were to buy the stock, Mr.Stott?

A Not to my recollection, no, sir.

Q Did Mr. Yamada tell you where to go to find it?

A Not to my recollection, sir.

Q He just said buy 5000 shares of Hair Extension.

A If that was the amount that the order was.

Q Then what did you do? Now you got an order for 5000 shares Hair Extension Centers. What did you do?

A Depending if he got me to buy at the market or a limit, I would make out the ticket, enter it in the order room, and it would be teletyped in the over-the-counter department.

Q You are quite sure Mr. Yamada didn't tell you where to go to get the stock?

A Yes, I am.

Q How about Creative Polymers, did you think that was a blue chip in 1969 or did you think it was junk?

A I had no reason to believe there was anything wrong with Creative Polymer. This was an order entered by an investment advisor and I took the order on the phone.

Q Did you ask during your daily conversations with Mr. Yamada, did you ask him what about Hair Extension Centers, what does it do? Did you ask any questions about it?

A I might have in reporting it back laughed a little about it is a rather unusual name, but that would be the sum and substance of it.

Q You laughed about it?

A You have to agree that --

Q Did you ask him what business is the company doing, what does it do, its assets, its earnings, does it pay any dividend, does it have any flow, where do you buy it?

A No.

Q You are calling him every day with recommendations and he is buying other stock through you and you never asked him why he is buying that stock on little information from Mr. Yamada in return for the information you were giving him?

A I never felt it was my position to do so since he was the investment advisor, sir.

THE COURT: Is an investment advisor such as Geddes and Yamada, at the time they were referred to Dr. Rolf, are they registered representatives or were they registered representatives? How do they earn their keep for what they do?

THE WITNESS: How does an investment advisor?

THE COURT: Yes, in this instance.

THE WITNESS: I don't know what the arrangement with Dr. Rolf and Mr. Yamada was as to how he was going to be compensated, but an investment advisor, in other words, your Honor, if you came to me and I was an investment advisor, I would sit down and counsel you as to what you should purchase and what you should sell, and those orders would be entered through a brokerage firm by the investment advisor, because he would sign a piece of paper giving the investment advisor complete discretion of the account.

THE COURT: In the business, if you know, how does the investment advisor get a return? What happens? You would get a commission because you are a registered representative. What would he get?

THE WITNESS: I believe -- well, I have other investment advisory accounts, the Dreyfus people and things like that. They send a bill with a letter from the client every six months, if we happen to do the custodial work before -- as we said before -- they would send a letter from the client and a bill asking Blyth Eastman Dillon, with an okay from the client, tosend them a check for X amount of dollars.

THE COURT: For their fee?

THE WITNESS: Their fee.

THE COURT: Did that happen in this case as between Dr. Rolf, Eastman Dillon and Yamada?

THE WITNESS: I don't know what the fee arrangement was,your Honor.

THE COBT: Yamada must have gotten paid

during the time that he served Dr.Rolf. Did he get paid through Eastman Dillon and at the instance of Dr.Rolf?

THE WITNESS: Not to my knowledge, no.

MR. KELLY: Your Honor, the testimony is, the arrangement Dr. Rolf made with Mr. Yamada, he was to ge 10 per cent of the increased capital in the account.

THE COURT: Directly from the doctor?

MR. KELLY: My recollection is, your Honor, there was no testimony that answers that question, and therefore I don't know the answer to that question.

MR. TESSLER: Your Honor, I will agree with Mr. Kelly except my recollection was the commission Mr. Yamada was seeking was 20 per cent in the increase in value. I believe he also testified since there was never any increase in value at the end of a particular period, Mr. Yamada never got any compensation from Dr. Rolf. Certainly it is clear he never got any brokerage commission

THE COURT: Then I think it was developed the benefit to him as he saw it was buying power.

MR. SILVERMAN: Right.

MR. TESSLER: That was secondary. Compensation was to come from the increase in value. Buying power was a peripheral issue.

THE COURT: All right.

Q Do you know, Mr.Stott, of your own knowledge whether an investment advisor, whether it is legal for an investment advisor to be compensated by a per cent of th capital appreciation?

A No, I don't. I don't know investment advisor's fees, I don't know what they are.

Q But you deal with investment advisors regularly don't you?

A Yes, but I don't ask what they are being paid.

Q You never once asked an investment advisor what is your commission and are you allowed to get a percentage under the profits?

A No, I don't think that is my position [illegible] do so. That is like asking you or Mr. Kelly or anybody what they make a year.

Q We were discussing some of the stocks that were purchased through Eastman Dillon and I mentioned Creative Polymer. How about International Funeral Services. Do you recall the purchase by you of International Funeral Services at Eastman Dillon?

A If you say it was purchased there, maybe it was, but I would like to have a piece of paper in front of me. I don't know -- there were so many. I don't know what was purchased.

THE COURT: All right, Mr. Kelly.

MR. SILVERMAN: I think I can give him that, Judge.

Q I am going to give you pages from the four volumes that you had and I will ask you to look through -- they are in alphabetical order -- and tell me whether International Funeral appears there.

Mr.Stott, I show you a copy of an Eastman Dillon confirmation which has been admitted into evidence as Exhibit Q, and it is page 71 of Exhibit Q, and I ask you whether that helps refresh your recollection as to whether International Funeral Homes was purchased through Eastman Dillon and you.

A It looks like 100 shares.

Q And below do you have Creative Polymer Products?

A That looks like it was sold through us, 1500 shares.

Q When International Funeral was bought, did you think that was a blue chip?

A I had no reason to believe there was anything wrong with it. I believe it was an underwriting at the time. I had no reason to believe there was anything wrong with it.

Q Had you ever heard of the company?

A Not until that offering, no.

Q You had been in business for 12 years at that time, 12 or 13 years. YOu had been manager in Paters Newark. Had you ever heard of International Funeral?

A Not until that time.

Q Had you at least heard most of the stocks that were traded?

A Where?

Q On Wall Street.

A Oh, on Wall Street?

Q Yes, traded on Wall Street, Mr.Stott. Yes or no. Did you know of the stocks that were traded?

A All the stocks, no.

Q Most of them?

A Gosh, no.

THE COURT: Or so-called hot stocks at the time

THE WITNESS: When a new issue comes out, we get a calendar and that might be the first time I might have heard of some particular issue, your Honor.

Q How about Simplex Wire & Cable? Had you hear of that issue?

A Yes, I had.

Q Was your father the president of Simplex Wire?

A Yes, he was.

Q And Dr.Rolf bought that stock?

A Yes, he did.

Q I take it at least in that transaction you weren't an order-taker. You made a recommendation?

A Mr. Yamada called me. There was an article in the Wall Street Journal stating my father and a group of men -- do you want the names -- well, a group of men had bought a controlling interest in the company called Simplex Wire & CAble, and Mr. Yamada saw it in the paper and he called it to my attention that, is this your father, and I said yes, it is, and what do they intend to do with the company, and I told him they intend to close the plant in Cambridge, Massachusetts and build a new plant in Maine, and modernize their plant in Newington, New Hampshire, and get the company back on the track and put it on a profitable basis, which in fact they did do.

Q Did you recommend Mr. Yamada buy that stock for Dr.Rolf? Yes or no.

A I don't think that is a yes or no.

Q For Dr. Rolf's account?

A No.

Q Were you recommending that stock over a period of time?

A Yes, over a period of time.

Q Do you recall whether at least 25 accounts?

A I think it would have been, yes.

Q And you of course later found out that Dr. Rolf's account purchased Simplex Wire, is that right?

A Yes, they did.

Q And you got a commission on it?

A Yes.

Q And you got a commission on the sale?

A Was it sold through Eastman Dillon?

Q You said the usual practice was when a stock was received in Eastman Dillon and purchased through Eastman Dillon, it was sold there. Was there a different procedure --

A I believe I said if a stock was purchased, if it was not delivered out, if we were not instructed to deliver it out and told to sell it, it was sold through us.

Q Was your father once affiliated with Standar d Oil of New Jersey?

A He sure was.

Q What position did he have?

A He was on the board of directors, he was an executive vice-president in charge of worldwide marketing.

Q Did you recommend to Mr. Yamada that he purchas Standard Oil of New Jersey for Dr.Rolf's account, yes or no?

A Again, Mr. Silverman, if I recommended Mr. Yamada purchase Exxon, now known as Exxon, I recommended everything to Mr. Yamada as an institutional manager and as an investment advisor.

Q How many accounts did you have running with Mr. Yamada? You were calling him every day. Not much from Takara Partners, not much from Competitive Associates?

A Right.

Q You said you got very little from Mr. Maursi, right, and not much from the Neuwirth Fund, right? So the accounts you were running with Mr. Yamada was Dr.Rolf's account and when you called each day to make recommendation it was for Dr.Rolf's account. That was the account that was running, not these other accounts.

MR. KELLY: Your Honor, I object to this brief at this point.

THE COURT: Do you have a question?

THE WITNESS: Could you rephrase it? It was quite long.

THE COURT: Mr. Yamada had six principal clients of those you have mentioned, of which Dr.Rolf, if not his largest,one of his largest?

MR. TESSLER: Your Honor, I would respectfully rise to object. I don't think Mr. Yamada testified to that, as to the extent of the activity of Dr. Rolf's account.

MR. KELLY: I will say, your Honor, he said he estimated the amount of money under his direction and control was $20 million.

MR. TESSLER: I will agree.

THE COURT: And in a given year $5 million was turned over apparently to Dr. Rolf's account.

MR. TESSLER: No, your Honor. I think the letter from Dr. Rolf mentions $5 million. I don't think the record indicates he had even 50 per cent of $5 million.

THE COURT: It could still have been turned over though.

MR. TESSLER: Yes, your Honor. I don't think there was any testimony by Mr. Yamada to my recollection as to what rank Dr.Rolf had in the panarama of his entire investment activities. I just don't think that question was asked.

THE COURT: I think it was.

MR. SILVERMAN: He was the largest individua your Honor, and I believe corporate accounts may have outshadowed him.

THE COURT: He named three individual accounts and three corporate accounts.

MR. TESSLER: That's right. I would agree Dr. Rolf was the largest individual. I don't think there was any comparison between the institutional accounts and the individual ones.

THE COURT: Thank you.

Q Mr.Stott, let's go back for a moment and we will pick up the accounts. You purchased GPI Enterprises for Dr. Rolf's account, did you not?

A Blyth Eastman Dillon purchased.

Q And you got the commissions on it?

A It was purchased on instructions of Mr. Yamada, yes.

Q Did you know anything about GPI Enterprises?

A No.

Q You testified in your direct that you never heard of the word "boxed", didn't you?

A That's correct.

Q Have you ever heard of a safety deposit box?

A Yes.

Q Do people generally put stock certificates in safety deposit boxes?

A Yes.

Q Have you ever heard of a safety deposit box referred to as a box, simply as a box?

A Yes.

Q Have you ever heard of going short against a box or trading against the box?

A Yes.

Q What does trading against the box mean?

A Trading against the box, that I don't know.

Q What does going short against the box mean?

A Shorting securities that are being held by your account.

Q And they are in your safety deposit box? Righ

A My understanding is, it is in the client's acco in the firm.

Q Have you ever heard of a marketmaker say that when he is long,that he has stock in the box?

A No.

Q You never heard of that?

A No.

Q A marketmake saying I have got stock in the box when he is long?

A When they are long, they say they are long.

Q If somebody were to say to you, I got the stock boxed, would that ring a bell that maybe that person has control of all the flow? Yes or no.

A Absolutely not.

Q When somebody said I have got the stock boxed, you would say where is the debit, and where is the --

MR. KELLY: I object, your Honor.

THE COURT: Sustained.

Q GPI Enterprises, did you ever ask Mr. Yamada any questions about that in your daily conversations?

A No.

Q Did he ever volunteer and tell you anything about it?

A No.

Q How about Health Evaluation, another stock that you purchased for Dr. Rolf at Eastman Dillon.

A That Blythe Eastman Dillon purchased?

Q And you got the commission on, is that right?

A Yes. What was the stock?

Q Health Evaluation Systems.

A What about it?

Q Did you think that was a blue chip in '69?

A No, I had no reason to believe there was anythi wrong with it in '69.

Q I didn't ask you that. Did you think it was a blue chip? Yes or no.

A No.

Q Did you think it was junk?

A Health Evaluation Systems. I had no reason to believe that there was anything wrong with the stock or to use the phrase that you used "junk."

Q Did any other accounts of Health Evaluation Systems --

A I have to look at the records.

Q Did you ever recommend Health Evaluation Systems?

A No.

Q Could you, as a representative of Eastman Dillon, recommend Health Evaluation Systems and still operate within the rulings of Eastman Dillon?

A I don't know.

Q You don't know whether Health Evaluation Systems was rated B-plus by Moody's and Standard & Poors?

A I do not know.

THE COURT: When you were branch manager, I think you testified it was two different places, and one place there was as many as nine registered representatives and in the second, about double. As branch manager was it one of your responsibilities to supervise the registered represents working out of the branch?

THE WITNESS: That is correct.

THE COURT: And to oversee their orientation and their trading?

THE WITNESS: That's correct.

THE COURT: As part of their trading did you have occasion to go into various aspects of the rules of the board regarding know your customer?

THE WITNESS: Yes.

THE COURT: Did you train your registered representatives, those under your supervision, specifically as to what that meant?

THE WITNESS: They were trained in the training program in New York.

THE COURT: Was it part of your responsibility as branch manager, taking these registered representatives who had been trained in New York, to see to it that they carried out their training as it had been provided in New York?

THE WITNESS: That is correct, yes.

THE COURT: What did that entail your doing?

THE WITNESS: In other words, that they bought sold -- bought, I should say, bought and recommended to clients stock that we were recommending or if they were going to recommend some stock that we didn't follow or didn't recommend in the research department, that they got clearance from the research department to recommend this stock as to whether it can be purchased.

THE COURT: What did you understand the obligation of diligence as to accounts as per the rules of the board to be? Would you explain it?

THE WITNESS: I am sorry, your Honor?

THE COURT: The rules of the board provide for this obligation, is that correct?

THE WITNESS: And the rules of my firm, yes.

THE COURT: Let's take the board rules. What did you understand the board rules to mean as to diligence as to accounts?

THE WITNESS: To see that the securities purchased in the account, you know, they were the proper securities. In other words, they fit the plans of the client. In other words, if the client was growth-oriented or income-oriented, that it fit his program.

Your Honor, in the case of an investment adviso when an investment advisor puts an order in to be purchased or sold, you can't say that the investment advisor -- he is the one advising the account. You don't say to him, "Hey, do you know what you are doing?"

MR. TESSLER: Your Honor, I would move that statement it totally gratuitous and ask it be stricken, the last statement by Mr. Stott. He is not an authority --

THE COURT: I recognize that.

MR. TESSLER: Thank you, sir.

THE COURT: You were trained first to become a registered representative?

THE WITNESS: That is correct.

THE COURT: And secondly you were trained at Eastman Dillon yourself?

THE WITNESS: Yes, sir.

THE COURT: And then you had responsibilities for the overseeing, if not -- I think you said trading others too?

THE WITNESS: That I trained, no.

THE COURT: But overseeing them to see they carried out that which they were trained to do?

THE WITNESS: Yes, sir.

THE COURT: Now, is it correct then to assume that you were familiar yourself with the specifics of due diligence as to accounts, customers and so forth?

THE WITNESS: Yes, sir.

THE COURT: And that was true during the period of 1969, '70, '71?

THE WITNESS: Yes, sir.

THE COURT: Are you aware of any specific provision that you believe exempts a firm from due diligenc where an investment advisor is in the picture?

THE WITNESS: I don't know, your Honor.

THE COURT: Were you ever trained at Eastman Dillon to that effect,that when an investment advisor is in the picture, that EastmanDillon's represent who carries the account even as a bookkeeper, if you will, has no further responsibilities as to with respect to due diligenc to the customer?

THE WITNESS: That was my belief.

THE COURT: I am not asking you for your belief. I am asking you if Eastman Dillon as a part of its instruction to you instructed you that if you had an invetment advisor in the picture, that any obligation as to due diligence was somehow diminished or wiped out, eliminated, or did you just think that up yourself?

THE WITNESS: I believe --

THE COURT: You didn't think it up yourself?

THE WITNESS: No. The paper is very definitive

THE COURT: I want to know the source. You have indicated you were trained.

THE WITNESS: Yes, sir.

THE COURT: I want to know whether that was part of your training at Eastman Dillon.

THE WITNESS: I believe it may have been.

THE COURT: And the next question is, you dealt with several investment advisors, you have indicated.

THE WITNESS: That is correct.

THE COURT: Was that your general customary way of proceeding, whenever you dealt with an investment advisor, you thereafter considered that any account of your firm since there was an investment advisor in the picture no longer required that you be concerned about any due diligence obligations? Was that your general practice or just limited to the plaintiff's case?

THE WITNESS: Unless there was something blatently wrong with the order that I got from an investmen advisor, or I had knowledge that this was, you know, something illegal was going on in the security and if my firm permitted the order to be executed, I felt it was perfectly all right, yes. That is what I had been told.

THE COURT: You had been told by whom?

THE WITNESS: That was part of the training program. If we do not permit an order to be entered on the stock, we feel there is a reason for that.

THE COURT: Let me go back to my question. Would it be correct then for me to conclude that it is your testimony, where an investment advisor was in the picture, you were trained not to interfere, you were trained that the firm, barring some clear illega-ity, your responsibility and the firm's responsibility no longer existed in terms of due diligence as far as the account, the customer was concerned. Is that stating your testimony accurately or inaccurately?

THE WITNESS: Almost accurately.

THE COURT: Correct it for me then.

THE WITNESS: In other words, with an investment advisor, I do not know -- if you were a client of an investment advisor, I wouldn't even know you. I do not know what your requirements are, if you are looking for growth or income. Unless there is something definitely wrong with the security and an investment advisor gives me an order to buy a stock for your account, me not knowing you I execute the order for the investment advisor.

THE COURT: So the clear understanding on my part would be, you are saying where there is an investment advisor in the picture, you might very well, and I gather this actually did occur, didn't even know the customer, and you carried out what the investment advisor told you to do as per trade authorization such as Exhibit B, in evidence.

THE WITNESS: That is correct. In other words, an investment advisor will give me the order and he might say, open an account for such and such a person, Judge Pierce, and open an account for Judge Pierce. I don't know Judge Pierce.

THE COURT: And you don't proceed to get to know him?

THE WITNESS: No. When an investment advisor gives you that, we require -- we have a form signed in the case of Judge Pierce, and the Social Security number, and all the things that are required but, we do not get to know Judge Pierce.

THE COURT: Then I gather that you consider that it is the investment advisor's obligation from that point on to exercise due diligence.

THE WITNESS: That is correct.

MR. KELLY: Your Honor, may I make one comment. I didn't want to interfere unless it be taken as coaching. I think it is fair to say there is a difference between due diligence to which I am not so sure I know entirely all its ramifications. There certainly is, separate from that or at least part the question of the obligation of a registered representation determines what is called suitability, and that term, suitability focuses upon the question as to what is fit for the customer and with respect to due diligence in general that would involve other things, such as the obligation to get the best execution or the obligation to see to it that margin requirements are met, or the like. I do believe that here the term "suitability" and "obligations" as required by the various regulatory agencies is the more apt term in defining what the relationship is between a custome if you were advising a customer or an investment advisor where you are acting in another context.

THE COURT: That would be true, I gather not just with respect to those purely custodial situations where the purchases were made through some other firm, and the securities thereafter forwarded to EastmanDillon for custodial purposes, but also to the situations where the investment advisor, at their direction the purchases were made at Eastman Dillon for the plaintiff's account.

The same in both situations.

MR. KELLY: I would say the same except I can't conceive of any instance in which any registered repre sentative would ever be accountable for a delivery of a security, whether it came from another broker, a bank or direct from the customer. If the customer brought in 100 shares of Mississippi Mud, it is the same situation as if it was delivered in. If the customer had it, I don't see how it can ever ben considered that the broker has in that context any obligation.

The obligation of a broker in connection with suitability is where he is imposed with the responsibility to make recommendations, having taken into account what it is the customer has told him he wanted done, and in connection with most or many, a customer calls up and says buy me Standard Oil, then he has made his own decision.

Many customers don't need the help of a broker-dealer. Others do. It depends on the circumstances. Certainly with a security being delivered in, if I go to a security house and I say I have 100 shares of Mississippi Mud, will you hold it in my account, they will hold it in my account.

How are they to be held chargeable for something that I have done myself?

THE COURT: Go ahead, counsel.

BY MR. SILVERMAN:

Q Building on what the Court asked you, I want yo to assume that one of your registered representatives, either form the Newark or Paterson office, had an account and in the account were the 15 stocks listed on Plaintiff's Exhibit 17 in evidence. Would you, Mr.Stott, question that registered representative?

A If all these were the ones that were purchased at our firm?

Q They were either purchased at your firm or paid for by your firm. They were purchased elsewhere, the were paid for by your firm.

A At the same period of time we are talking about

Q Some were purchased in your firm, others outside your firm, but all were paid for by your firm out of the customer's account, customer's money, and he had a custodian account with you. Would you question the registered representative if you saw those 15 stocks?

MR. KELLY: I will object to the question, your Honor, unless the term "custodial account" is removed because it has no meaning. It has no meaning at all.

THE COURT: Well, customer's account.

A What you are asking me is, if I saw these 15 securities in a person's account --

Q In one account.

A In one account. It could depend on what the account's objective was and if it was directed to us or if my registered representative made the recommendation. If it was just directed to us, the orders were --

Q You are not answering my question. Would you question the registered representative --

THE COURT: I think he can have difficulty with the question. I think he is entitled to put his conditions on it.

Q My question now is a very simple one: Would yo question, just question, call in the registered rep and say Iwant to sit down and have a talk with you about this account, if you saw those 15 stocks in there, forgetting no for the moment whether they -- you knew nothing else except for the fact there were 15 --

A If I were doing my job as a manager I would know it because I would be reviewing monthly statements.

Q Could you call in the registered rep?

A If I knew -- you have to answer the question this way, sir. If I knew what the account was looking to do. If it was an income, growth account or a fellow looking to tripple his money. It depends what is suitable for the account. If it was put in the account by an investment advisor, if the papers were in order -- if it was into the account by an investment advisor May 1, 1969, and these were in the account and the paper in the account was in order that the investment advisor had complete discretion over the account, no, I wouldn't, because I had no reason to believe then there was anything wrong with any of these stocks.

Q And it is your testimony then, if you saw these 15 stocks in the account, and nothing more, you wouldn't have raised any question with the registered rep, is that right?

A I don't believe that was my testimony.

Q Would you answer my question?

THE COURT: I think he has answered it.

MR. SILVERMAN: All right, Judge. I will go on then.

Q Did you ever have any occasion to discuss the purchases being made in Dr. Rolf's account with Mr. Yamada?

A If he told me to buy a stock or sell a stock. I would call him back and say you bought this and --

Q Did you ever discuss with him why are you buying this junk for Dr. Rolf?

A No.

Q Did you ever say something in substance like that?

MR. KELLY: I object to that, your Honor.

THE COURT: I will allow it.

A I don't believe I did, no, sir.

Q You don't recall whether you said it or not, is that right?

A I don't believe I did.

Q From the period of time in which Mr. Yamada began handling the account right up to the end you never once said to him, what is this junk that is being brought in the account or something like that?

A No.

Q You knew that the SEC had suspended trading in Hair Extension in June of 1970, didn't you?

A I don't believe I did, no, sir.

Q Did you know that there was a suspension of trading in Hair Extension at any time?

A No, I don't believe I did, sir.

Q Nobody ever told you about that?

A Not to my knowledge, no, sir.

MR. SILVERMAN: Your Honor, I think we will save time if we can have a few minutes' recess.

THE COURT: We will take a ten-minute recess.

(Recess.)

THE COURT: Please continue.

Q Mr.Stott, I may have misspoken when I said Hair Extension being the subject of a suspension order by the SEC. In June of 1970. Do you recall whether Health Evaluation Systems was subject to a suspension order by the Securities and Exchange Commission in June of 1970?

A Not to my recollection.

Q Is it important that you once knew of that fact?

A I don't think so.

MR. SILVERMAN: I am going to ask that a copy of a complaint entitled "Securities and Exchange Commission vs. Everest Managment Corporation," and filed in this court be marked for identification as Plaintiff's Exhibit 21.

xxx (Plaintiff's Exhibit 21 was marked for identification.)

MR. KELLY: Is that a proceeding in June?

THE COURT: Whatever it is, he is only marking it for identification at this point.

MR. KELY: For whatever use it may be I think the record will reflect the fact that the security was bought in April and sold in May.

Q Mr. Stott, I show you what has been marked as Exhibit 21 for identification and I will askyou to read to yourself, if you will, paragraph 93, and to indicat to me when you have done so.

(Pause.)

A We say again purchasing shares of Health -- is that what they are referring to, Health Evaluation?

Q Yes, Health Evaluation Systems.

A I have read it, sir.

Q Prior to today, were you aware of an SEC suspension order against trading in Health Evaluation Systems?

A No.

Q You are aware of it now, is that correct, for the first time?

A That's correct.

Q And the suspension order according to the Plaintiff's Exhibit 21 for identification was June 25, 1970.

MR. KELLY: I will object to that question, your Honor. The document is not in evidence.

THE COURT: Yes, sustained. He wouldn't know.

Q Do you know when you purchased Health Evaluatio Systems for Dr. Rolf?

A I believe it was in April I was given an order to purchase it by Mr. Yamada.

MR. SILVERMAN: I am going to ask the Court to take judicial notice of a complaint filed in the SouthernDistrict entitled Securities and Exchange Commission against Everest Management Corporation.

THE COURT: Do you have the number?

MR. SILVERMAN: I do not, your Honor, but we can get you the number and supply that, as I know that would be of assistance.

THE COURT: That would be judicial notice of what then?

MR. SILVERMAN: Of a document filed with this court.

THE COURT: It would be helpful if you would be more explicit. For example, I gather from your questio there was some order that resulted from the commencement of that action in this court. If it is the ultimate disposition, that is, the order that you are interested in taking judicial notice of, give me the docket number.

MR. SILVERMAN: If your Honor please, the order is an order that the Commission issues itself. It doesn't apply to this court for an order suspending trading It does it on its own. The complaint recites that fact an I would simply, because we didn't get the complaint certified, it is some 134 pages, I would ask your Honor to take judicial notice of it and I will provide you with an index number.

THE COURT: Just tell me what you are having me take judicial notice of.

MR. SILVERMAN: Paragraph 93 in that complaint, and of the fact that Paragraph 93 recites that on June 25, 1970, the Commission suspended trading in the securitie of Health Evaluation Systems.

MR. KELLY: I object to that, your Honor, on the ground of relevancy. The security was purchased in April. It was sold in May so that the events of purchase and sale had occurred and had been completed prior to June 25, 1970.

THE COURT: How about that?

MR. SILVERMAN: That is true, your Honor, but we are now going into whether he knew there was anything impropr going on in the account and if he had purchased and sold the stock that was suspended from trading a month later, and he didn't look into that, why, that would be something that might have put him on notice.

THE COURT: I am going to sustain that objection.

MR. SILVERMAN: And your Honor will not take judicial notice of the complaint?

THE COURT: In light of the ruling that I have just made to the objection, that is a further ground. You are offering it for the truth of what is asserted in Paragraph 93 in any event. It is merely an allegation.

MR. TESSLER: I would indicate for the record, your Honor, on Dr. Rolf's purchase and sale of the securities of Health Evaluation, the doctor made $16,180 pr fit in that transaction.

THE COURT: Of course you have made that point several times, Mr. Tessler. I have had an occasional securities suit where the SEC brought in just a whole slew of people who had purchased securities, brought them in as witnesses against the registered representative and others who were parties to the suit, and everyone had made a profit. And, defendants still lost.

MR. TESSSLER: I understand that, Judge, but I would point out, as I am sure your Honor knows, this is not an SEC action.

THE COURT: Yes. I have dozens of matters and you can put that on the record, if you wish to.

Q Mr.Stott, do you remember the occasion, do you recall now the occasion when Eastman Dillon sold for Dr. Rolf more stock than he owned in a security called Consolidated Oil & Gas?

A Yes, I recall.

Q He had 3000 shares in the account and you sold 4000, is that right?

A I was instructed by Mr. Yamada to sell 4000, yes.

Q Did you get a commission on the 4000 shares that were sold, the extra thousand?

A No. I believe when the situation was rectified, after Mr. Yamada had realized his mistake, that I only received the commissions on the actual amount of stock that was sold.

Q Did you purchase an additional thousand when you oversold the account?

A I don't recall how the error was rectified. It was done through the normal channels, I would assume.

Q Natomes Corporation, was that a stock you were following?

A It was very actively traded at that time, but I particularly didn't follow it.

Q Do you recall that stock was purchased aronnd the first of the year 1970, and sold within one week of the purchase date?

A I would have to see a record.

Q If, in fact, a stock was purchased one day and sold a week later, would you raise any question about that transaction?

A No. It has happened on other occasions with other accounts.

Q Do you know whether the doctor made a profit or a loss on that?

A No, I don't.

Q Do you know what your commissions were on a one-week trade in and out?

A No, I don't.

Q Do you know what Mr. Yamad'a functions were for Dr. Rolf, what services Mr. Yamada was to perform for Dr. Rolf?

A No. It is stated in the Eastman Dillon trading authorization.

Q Di you know what services, functions, Mr. Yamada was to perform?

A He served as an investment advisor.

Q Did you know what he was supposed to do for Dr. Rolf?

A No. I never knew what Dr. Rolf's objectives in his account were.

Q Did you know what Mr. Yamada, as an investment advisor, was supposed to do for Dr. Rolf?

A No.

MR. KELLY: I object to that question, your Honor. It is a legal question.

THE COURT: I will take it.

Q So that throughout this period you didn't know what Mr. Yamad'a duties were for Dr. Rolf, is that correct?

A His duties were that of an investment advisor but as far as what the doctor's objectives were in the account and what he had discussed with Mr. Yamada, no.

Q I don't want to know what his objectives were. I want to know what you understood Mr. Yamada's duties were. What were Mr. Y amada's duties?

A To advise, as any investment advisor, to advise and counsel Dr. Rolf on securities that should be purchased and sold in his account.

Q Do you remember when I took your deposition, I asked you the following question, page 27, line 12:

"Q Did you form any impression as to whether Dr.Rolf's account was being properly managed by Mr. Yamada during the period in which the account was entrusted to Mr. Yamada?"

Then there is an objection and colloquy and Mr. Lyon said, "It was being managed and directed pursuant to agreements that were had between Dr. Rolf and Mr. Yamada.

"Q Did you form any impression during the period in which Mr. Yamada was managing Dr. Rolf's account as to the manner in which that account was being managed?

"A No.

Q You didn't form an impression as to whether it was well-managed or poorly managed or adequately managed?"

And colloquy.

"Q What function was being performed for Dr. Rolf?

"A My understand was, to the forms that were signed he was an investment advisor.

"Q And what would be his duties?

"A Well, I don't know what the duties were."

Was that a truthful answer at the time you made it?

A Yes.

MR. KELLY: I don't think that is a complete statement, your Honor. It continues:

"Q I want to know, Mr.Stott, if you know what services were being performed by an investment advisor in general?

"A Well, each person is different, each account an each person, their investments, their objectives are different."

MR. SILVERMAN: And:

"Q Do you know what Dr. Rolf's investment objectives were?

"A He never told me, no.

"Q Did you ever discuss them with Mr. Yamada?

"A No, sir."

Q Was that true, Mr.Stott?

A Could I see that? What line are we on, sir?

Q Pages 28 and 29.

A That is basically what I said now.

Q So then that testimony is true. You did know what Mr. Yamada's duties were and --

A That I didn't?

Q You didn't know what Mr. Yamada's duties were, true?

A As pertaining to Dr. Rolf's investment objectives.

Q And you didn't know what Dr.Rolf's investment objectives were?

A That is correct.

Q And you never discussed them with Dr. Rolf?

A That's correct.

Q But you had numerous telephone conversations with Dr. Rolf, didn't you?

A That's correct.

Q And never in the course of any one of these conversations did you ever discuss Dr. Rolf's investment objectives, correct?

A That's correct.

Q And you spoke to Mr. Yamada every single day and you never once asked him what Dr.Rolf's investment objectives were?

A That is correct.

Q Did you know at the time that Dr. Rolf lost $4000 on the trade in Natomes, he bought it one day and sold it a week later, he lost $40000; did you notice that at the time?

A I might have. I don't really know.

Q But you noticed what your commissions were, which were close to a thousand dollars, right?

A I believe I stated I didn't know what my commissions were.

Q Did your secretary every single month check eve transaction to make sure that you got your commissions?

A That's correct.

Q And there was never, to your knowledge, a mista made on your commissions, right?

A There were mistakes from time to time. Some things were left out and then she would bring that matter to my attention.

Q And that was always picked up and every month you got what were your commissions?

A Or if it wasn't in that particular month, I would get it the following month.

Q But you didn't look to see whether Dr. Rolf's account was making any money or losing any money throughout the period, is that right?

MR. KELLY: I object to that statement.

THE COURT: Overruled.

A WHat was the --

Q Did you look to determine at any time during the period, make your own determination, as to whether Dr. Rolf's account was making money or losing money?

A I didn't specifically look, no.

Q In fact you never made any determination as to whether the account was making money or losing money, yes or no?

A No.

Q When you recommended Mr. Yamada to Dr. Rolf, you knew he was 26 years old, is that right?

A I knew he was in his late twenties.

Q And you had had only one lunch with him and tha lunch was at the Zum Zum, is that right?

A I had two or three lunches, I believe.

Q Before you recommended him to Dr. Rolf?

A Yes, I believe so.

Q But at the lunches you had with him, were they all in short order restaurants like Zum Zum?

A Yes.

Q Was it your practice at lunch not to discuss business?

A Yes.

Q And did you discuss sports at lunch?

A We would talk about hockey or something, yes.

Q Never about the market, right?

A No. The market might come up. If it was up that day, I would say this was up and that was up or --

Q You have answered it. You didn't discuss business with him. You discussed with Mr. Yamada with Mr.Ely?

A Mr.Charles Ely, yes.

Q That was at your board of director's meeting at your country club in New Jersey?

A No, it was a golf club organized by a group of people as a land investment.

Q But in that club you and Mr. Ely are on the board?

A Yes.

Q You discussed Mr. Yamada with Mr.Ely?

A Yes.

Q That conversation took about two or three minutes?

A No, about --

Q Longer?

A Three to five minutes, somewhere in there.

Q In your deposition, page 12 -- you did read the deposition over?

A Yes, I did.

Q Page 13:

"Q How long did this conversation with Mr. Ely tak on the golf course?

"A It wasn't on the golf course. It was at a board meeting of the golf club. You know, a couple of minutes."

Was that answer true when --

A A couple, and three to five is to me basically the same thing, sir.

Q Other than that conversation, that couple of minutes or three to five minutes with Mr.Ely, and your lunches at the short order restaurant, two or three lunches where you had hamburgers, is that right --

A I don't remember what I ate, but it was a short order.

Q And you discussed sports, and you had no other information --

A There were other people there, too, three or four fellows. You just go out and have a bite to eat and come back.

Q And the doctor was 62 years old at the time, di you know that?

A No.

Q Did you know what his income was?

A No.

Q Did you know whether his securities being held in the custody of Eastman Dillon represented his life's nest egg?

A No.

Q Did you ask the doctor, is this your nest egg, Doctor, that we are holding?

A No, I didn't ask him.

Q Did the doctor tell youthat he wanted you to watch his account, Mr.Stott?

MR. KELLY: Your Honor, I think this question has been asked about five times.

THE COURT: I think it has, but you may answer.

A To watch his account? My assumption, as I told you before -- I don't know if the doctor used the words "Watch the account."

Q But he used a word like "watch"?

A I guess so.

Q Look over, maybe?

A Not look over.

Q Watch, but not look over.

Did you ever tell Mr. Yamada that he was servin on a trial basis?

A No. It was not my position to do so.

Q I didn't ask you what was your position, because you have a very strict definition of your position.

Did you tell Mr. Yamada that he was on trial for six months and that if the account didn't work, you would pull it?

A No.

Q You never had a discussion in substance like that?

A Absolutely not.

Q Do you recall the purchase for Dr. Rolf's accou of Kenton Corporation?

A Vaguely.

Q Do you know that that stock was sold five weeks after it was purchased and at a substantial loss to the doctor?

A No, I don't recollect that it was five weeks later.

Q Whether it was sold at a loss or a profit, you made commissions, regardless of whether the stock was profit or loss?

A Right.

Q You said in your direct testimony that you told Dr.Rolf about Mr. Yamada, that he had been with Kuhn, Loeb, and he was a brilliant analyst and that he had several important investment clients, is that correct?

A That is basically the gist of it, yes.

Q Did you testify that way in your deposition?

A I don't remember.

Q Let me see if I can't refresh your recollection I will read from page 16, at the bottom of page 16, line 25:

"Q Did you tell Dr. Rolf anything about Mr. Yamada?

"A I just said he was an investment advisor and Mr. Geddes was an investment advisor and I gave him both phone numbers.

"Q And you didn't tell him anything about their background and their investment philosophies, is that correct?

"A That is correct. No.

"Q So you just said 'Here is two names, Yamada and Geddes'?

"A Yes, and he had a couple that he was going to see in Boston and that was the last I heard of him.

"Q And did you give him telephone numbers?

"A Yes."

Were those answers true when given?

A Could I see them?

A That is basically the same thing I said now, a little thumbnail sketch.

Q Where did you say thumbnail sketch in --

A I am using that now.

Q Did you say in the deposition, did you testify in the deposition that theonly thing you told Dr. Rolf was Mr. Yamda's name and phone number? Is that what you said in your deposition?

A It must have been a misunderstanding because up here I said he was an investment advisor and Mr. Geddes was an investment advisor, and I told him who Mr.Geddes was with and --

Q That is in the deposition?

A No, it is not. That is basically what I said.

THE COURT: Mr.Stott, did you ever discuss with Mr. Yamada Dr. Rolf being put into certain stocks in order to make up for some losses he had sustained?

THE WITNESS: No.

THE COURT: All right, we will resume at two o'clock.

(Luncheon recess.)

2:05 P.M.

MICHAEL STOTT resumed.

THE COURT: Please continue.

CROSS-EXAMINATION (continued)

BY MR. SILVERMAN:

Q Mr.Stott, earlier I had asked you about Consolidated Oil & Gas and you had identified -hat there were 4000 shares sold in an account that had only 3000, and then I asked you whether there were any commissions charged on the sale of the thousand and the repurchase of the thousand and you said no.

I show you what has been marked as Defendants' Exhibit Q, pages 54 and 55, and I ask you, (1), does 54 indicate that a thousand shares were sold on September 25, 1969?

A Yes.

Q And does it indicate that there was a commission paid?

A Yes.

Q That is September 25.

Now, does Exhibit Q, 55 in evidence, reflect that a thousand shares were purchased five days later on September 30?

A Yes.

Q So you sold a thousand on the 25th, and then you purchased a thousand on the 30th.

A I believe this was done in the error account. I didn't execute the order.

Q Were there commissions charged in the error account?

A According to this there were, but I don't believe there were. I think the statement went out. This is a normal confirmation that is sent out and I believe they reflect commissions and I think they were later removed.

Q You believe that these commissions that are reflected here were not paid, is that right?

A That's right.

Q What is the basis for your belief, Mr.Stott?

A Well, it was an error and commissions aren't, to my knowledge, paid -- you know, if there had been an error in an account, commissions are not paid.

Q Your belief is that the commission should not have been paid because there was an error in the execution, but it is not based on anything else, is that right?

A No, the firm does not charge commissions on errors.

THE COURT: I think what counsel means is, you don't know in this instance one way or the other. What you are telling us is what you understand the practice is.

THE WITNESS: Yes.

Q Were you acquainted with Mr.Sterling?

A Yes.

Q Did you workwith Mr.Sterling?

A No, I didn't work with Mr.Sterling, no.

Q Did you tell Dr. Rolf you worked with Mr. Sterling when you made your first telephone call to him?

A I believe I told Dr. Rolf that Mr.Sterling and I were associated with the same firm and I would discuss things with Mr.Sterling as the head of the research department.

Q Were you familiar with Dr. Rolf's account at the time it was being handled by Mr. Sterling?

A No, sir.

Q Did you tell Dr. Rolf that you were familiar with the way Mr.Sterling was handling the account?

A No, sir.

Q Would you still deny that you told Dr. Rolf of that if I were to tell you that Dr. Rolf testified that you told him that you worked with Mr.Sterling and that you were familiar with his account.

A I would still deny it.

Q Did Dr. Rolf send you his Seljo partnership agreement?

A No, sir.

Q Did he send you any information about Seljo?

A No,sir.

Q Did he tell you anything about a put agreement that he had with Mr. Yamada?

A No, sir.

Q You didn't know anything about Seljo, is that right?

A No, sir.

Q Dr. Rolf never asked you a single question about Seljo?

A No, sir.

Q And he didn't send you anything about it?

A No, sir.

Q Did Dr. Rolf ask you any questions about Delanair?

A No, sir.

Q How about Monarch Industries, did he ask you anything about Monarch Industries?

A Not to my recollection, no, sir.

Q Do you recall telling Dr. Rolf that Mr. Yamada was friendly with the president of Monarch Industries, Billy Barnett?

A No, sir.

Q Did you discuss Monarch Industries with Mr. Yamada?

A No, sir.

Q Did you discuss Delanair with Mr. Yamada?

A No, sir.

Q Delanair was a sizab le purchase for Dr. Rolf, wasn't it?

A Yes.

Q It was about $400,000, is that right, 340,000?

A Something like that, yes,sir.

Q Did you get any commissions on that?

A On what, sir?

Q Delanair.

A No, sir.

Q Do you know if Mr. Yamada got anything on Delanair?

A No, I don't.

Q Did you ask Mr. Yamada about it?

A No.

Q Did you complain to Mr. Yamada that you weren't getting the commissions that you should have been getting from your clients?

A No, sir.

Q Did you ever -- make complaint is too strong a word -- did you ever question to Mr. Yamada the fairness of giving other brokers commissions on your customer's account?

A No, sir.

Q Did you know that Lynch, Jones was getting commissions on Dr. Rolf's account?

A Not until -- I forget what -- I knew they had to be getting something when the confirmation came in from Lynch, Jones. I forget what particular stock.

Q Did you know Mr. Yamada was making his office in the beginning with Lynch, Jones?

A Not to my recollection, no, sir.

Q You knew Mr. Devny, didn't you?

A Yes, sir.

Q He was with Lynch, Jones?

A Yes, sir.

Q He introduced you to Yamada, didn't he?

A Yes.

Q And you knew that Mr. Yamada was making his offices with Lynch, Jones, didn't you?

A No, I didn't.

Q Mr. Yamada never told you that he had --

A When I met Mr. Yamada, Mr. Yamada was at Kuhn, Loeb, and as far as I am concerned, as far as I knew, Mr. Yamada went from Kuhn, Loeb into his own business.

Q Did you ever discuss with Mr. Yamada the reason or reasons for opening accounts outside of Eastman Dillon?

A No, sir, I didn't.

Q Did Mr. Yamada ever ask you whether Eastman Dillon would come into some new issues, new offerings, become part of the dealer group or part of the underwriting group or some other part of the syndicate?

A No.

Q Never about a single new issue, he never asked you if you would come into it?

A No. If he gave me an order on a new issue and I went back and would give an indication to the syndicate, and if we were not in the deal, any underwriting, I would go back and tell Mr. Yamada.

Q Did Mr. Yamada ever give you instructions which marketmaker or which broker to call to buy over-the-counter stocks?

A Not to my recollection, no.

Q He never gave you the name, never said Provident Securities, for example?

A Not to my recollection, sir.

Q You don't deny it, you just don't recall it, right?

A I say not to my recollection.

Q At any time during the period May 1969 through March of '71, did you have any discussions with any of your superiors at Eastman Dillon concerning Dr.Rolf's account?

A I believe one time we made an -- I don't know if it was a delivery error or sent out a wrong confirmation or something like that, and I went to a Mr.Schlesinger, who was my superior and told him we had made some sort of computer error, I don't know, something to do with a computer and Mr.Schlesinger, I believe, called Dr.Rolf and told him we would straighten it out and the proper confirms or monthly statements, whatever it was, you know, proper one would be forthcoming.

Q Did you ever discuss Dr.Rolf's account with the compliance officer at Eastman Dillon?

A Not until the compliance officer talked with Dr. Rolf some time --

Q My question is, did you discuss Dr.Rolf's account with the compliance officer at Eastman Dillon during the period May 1969 through March '71?

A No, sir.

Q After the Yamada affair broke, did you discuss the Rolf account with the compliance officer at Eastman Dillon?

MR. TESSLER: Objection to the form, your Honor.

THE COURT: For purposes of what he is trying to get at, I think I will allow it.

Go ahead.

A Could you repeat the question. I am sorry.

Q After there was a lot of publicity about Mr. Yamada and his problems, did anybody from Eastman Dillon discuss the Rolf account with you?

A Yes, they did.

Q Who did?

A Mr. Cione.

Q Approximately when?

A It was a week prior to an article, some time about a week prior to the article in the Wall Street Journal.

Q Did the conversation with Mr. Cione take about 15 minutes, would you say?

A Somewhere around that, yes, sir.

Q Somewhere around 15 minutes?

A Yes.

Q Do you now recall what you said to Mr. Cione and what he said to you?

A I don't really know what I said to Mr.Cione, but Mr.Cione said we are not to do any more transactions in Dr.Rolf's account and I believe Mr. Cione called Dr. Rolf.

THE COURT: A little louder, please.

MR. SILVERMAN: I move to strike Mr. Cione called Dr. Rolf. It doesn't appear he had personal knowledge of that.

THE COURT: Strike it.

Q Did anybody at Eastman Dillon at any time from '69, say, through 1974, criticize you in any way for the Rolf account?

A No, sir.

Q Indeed,you were promoted, weren't you, you becan a vice-president, didn't you?

A Yes, sir.

Q And when did you become a vice-president? ✓

A I believe it was 1971, I believe. I am not sure 1971, I think it was, 1972.

Q Have you seen Mr. Yamada since he has gotten out of jail?

A Just in the courtroom the other day.

Q Were you, in 1969, one of Eastman Dillon's biggest producer?

A One of the biggest? I guess I was -- one of the largest ones, yes, I suppose.

Q Did you tell that to Dr. Rolf?

A No, sir.

Q You didn't tell that to him?

A Not to my recollection,no, sir.

Q Did you tell that to Mr. Yamada?

A No, sir.

Q Did you tell Dr. Rolf that your father was the president of Simplex Wire?

A Not to my recollection, sir, no. No.

Q Did Dr. Rolf, on any occasion, complain to you about the handling of the matter in which his account was being handled other than the technical matter you mentioned where Mr.Schlesinger called him?

A On a few occasions he would tell me that Mr. Yamada purchased, you know, I forget what stock, this stock or that stock, and I would say, you know, I don't know anything about them and that he should, you know, get in touch with Mr. Yamada and discuss these things with him, he is his investment advisor.

Q Did you ever tell Dr. Rolf Mr. Yamada was a miracle man, and none of his clients had ever lost a dime?

A No, sir.

Q Did you ever tell him that Mr. Yamada knew what he was doing and don't worry, he knows what is going on?

A No, sir.

Q Did you ever check any of the stocks that Dr. Rolf spoke about? Did you ever send them through the research department at Eastman Dillon and say what do you think of this Health Evaluation or Hair Extension?

A No, sir.

Q On how many occasions did Dr. Rolf complain to you about the quality of stocks?

A I said before it wasn't in the nature of a complaint. I don't know how many times, but he would just call and say Mr. Yamada bought this or Mr. Yamada bought that, and I would give him his over-the-counter quotes, and tell him that he should get in touch with Mr. Yamada to discuss these things with him.

Q And the doctor kept asking you about the stocks and asking you even though you kept saying to Mr. Yama the doctor kept asking?

A No, he didn't ask me. He would say Mr.Yamada was doing this and that. He never asked me an opinion on them.

Q What was your income from commissions from Eastman Dillon in 1969?

A My total?

Q Yes, your total, net to you, Mr.Stott.

A I would have to go look at my, you know, 1040 --

Q Give us a rough estimate. Wouldyou say it was in the neighborhood of half a million dollars?

A My God, no.

Q 200,000?

A No,sir.

Q How much? Less than 200?

A Yes, sir.

Q 100,000?

A Less than 100,000. If you want the exact figur I would have to look at my income tax forms.

Q What part of your commission income was attributable to the Rolf account?

MR. KELLY: What year?

Q In'69.

A I don't have any records here to determine that, sir.

Q Would you say it was better than 10 per cent of your income?

A I wouldn't want to venture a guess on that until I could look at some records.

Q Do you know what your commission income was from the Rolf account in '69?

A No, I don't.

THE COURT: Is it much or little in relation to your total earnings?

THE WITNESS: Your Honor, I really don't know the figure.

THE COURT: Might I draw an inference from that, that it probably was little since you don't remember? I would like to avoid that. If you have a recollection --

THE WITNESS: I didn't know I was going to be asked what I earned. I would have looked at my income tax statement.

THE COURT: Mr.Silverman should have gotten it in discovery.

Go ahead. Next question.

Q Were you ever fearful in 1969 or '70 that you might lose the Rolf account?

A No, sir.

Q You were never fearful about it?

A No, sir.

Q You never complained to Mr. Yamada about not getting all the commission that you were due?

MR. KELLY: I object, your Honor. We have heard this question now --

THE COURT: Sustained.

MR. SILVERMAN: I have no more questions, your Honor.

Thank you.

THE COURT: If I recall correctly, Mr.Stott, you were asked by Mr. Silverman if you ever discussed Seljo with Dr. Rolf.

THE WITNESS: Yes, I have.

THE COURT: And you said you didn't.

THE WITNESS: That is correct.

THE COURT: You were asked if you ever discusse with Yamada or he with you in relation to Dr. Rolf's account, and I think your answer was no.

THE WITNESS: That is correct, sir.

THE COURT: All right, Mr. Tessler?

CROSS-EXAMINATION

BY MR. TESSLER:

Q Mr.Stott, in April of 1969, prior to your initial conversation with Dr. Rolf, you had reviewed, had you not, Dr. Rolf's last monthly statement?

A I looked over the stocks in it, yes,sir.

Q Had you looked over the statement for more than one month?

A No. I was given the statement by the firm, the last statement, and told to contact, you know, Dr. Rolf.

Q Did you know before you contacted Dr. Rolf that he had had a discretionary account with Mr.Sterling?

A Yes, I believe I did, yes.

Q Where did you find that information from?

A I believe that was told to me by Mr.Schlesinger when the account was assigned to me.

Q What else did Mr.Schlesinger tell you?

A That was it, that Mr. Sterling wouldn't be comin back --

MR. SILVERMAN: Your Honor, I move to strike that as hearsay what Mr.Schlesinger told him.

THE COURT: I am going to take it.

A (continuing) He told me to contact Dr. Rolf to tell him that the firm had assigned the account to me and make the facilities of the firm available to Dr.Rolf.

Q And that it was a discretionary account?

A Yes, I believe he mentioned that, yes, sir.

Q And you reviewed the last monthly statement prior to the telephone call?

A Yes, I did.

Q So you knew basically what Dr. Rolf had in his portfolio at that time?

A The security position, yes.

Q Did you know or did you ascertain how much commission business Dr. Rolf had generated to the firm durin the prior year?

A No, I hadn't, sir.

Q You had no interest in that, Mr.Stott?

A No, I never even thought to do it. When an account is assigned to you upon somebody leaving or the death of somebody, they give you the statement and his account card, you know, with his name on it, and you get in touch, you are told to get in touch with the client and make the services of the firm available to the particular client. In answer to your question, no, I didn't ascertain what the prior commissions were. I don't know if I would be privy to that type of a thing. Mr. Sterling was a partner and I don't know if I would be privy to that information.

Q Isn't it so whether Mr.Sterling was a partner or not, the firm got the standard commissions from Dr. Rolf's transactions?

A I believe they did, yes.

Q Were the commissions set by the New York Stock Exchange?

A I believe so, yes, sir.

Q And you didn't know what those commissions were?

A No,sir.

Q You didn't know whether that account was profitable to the firm before you called Dr. Rolf?

A No, I didn't, sir.

Q You didn't know that account was profitable or not to Mr. Sterling before you called Dr. Rolf?

A No, I didn't.

Q So when you said to Dr. Rolf in effect, I would like to handle your account, you want us to believe you had no idea whether this was a profitable or non-profitable account, is that correct?

A Profitable in what respect, sir?

Q It generated lots of commissions.

A No, I didn't know what the commissions were.

Q You didn't know whether the commissions were a hundred a year?

A No, I didn't, sir.

Q Or ten thousand a year?

A No, I didn't.

Q And the firm didn't tell you?

A No, they didn't, sir.

Q You didn't know whether the firm wanted to keep the Rolf account?

A Well, I assumed if they assigned the account to me that they wanted to keep the account, yes, sir.

Q Did you ask anybody if they wanted to keep the account?

A I didn't think it was necessary to ask, but they assigned the account to me. I would assume if they didn't want to keep the account they wouldn't have had anybody call Dr.Rolf.

MR. TESSLER: I move to strike the witness' assumption, your Honor.

THE COURT: I will leave it in, but did you know what the value of Dr. Rolf's holdings were in the accou when you looked over the record of the account before you called him?

THE WITNESS: Using the monthly statement -- you see, the monthly --

THE COURT: Whatever you used.

THE WITNESS: The piece of paper they gave me showed the end of the monthly statement. All transactions and on the bottom it lists the security position. I had a general idea of what it was worth.

THE COURT: What was that general idea? What did you conclude it was worth based upon what you looked at?

THE WITNESS: I think the figure I had in my mind, just doing a general pricing of the account, was in the neighborhood, I think the securities in the account were worth in the neighborhood of six of $700,000.

Q As a matter of fact, Mr.Stott, isn't it correct that market value of the securities in Dr. Rolf's portfolio at April 30, 1969, were not a half a million dollars, but were rather closer to two million six hundred thousand?

A If that is what they were, I guess that is what they were.

Q You didn't ask?

A No. I told you I did a computation, just a quick look down the paper. You asked me a question, I am telling you what I thought they were worth then. I know what they were worth now.

Q Two million six?

A I believe that is the figure used around here, yes.

Q Did you know whether or not the account was on margin?

A I believe it was on margin.

Q Where did you find that information?

A That would show on the monthly statement.

Q Then at least it can be said that at the time you called Dr. Rolf you knew you were dealing with a customer who had a portfolio account at Eastman Dillon that was worth at least a half a million dollars?

A I said six to 700,000, and I forget what the debit balance was, but I was thinking what it was worth after the debit balance.

Q Six or $700,000?

A That was my guess. I know it was more now.

Q And you weren't interested prior to that calling Dr. Rolf determing what commission business that account had generated in the prior twelve months?

A I was not and I was not given that information.

Q You didn't ask anybody about it?

A No, I didn't. It was a partners' account.

Q I didn't ask you if you knew what Mr.Sterling had made. I asked you if you knew what commission business had been generated to EastmanDillon in the prior year.

A No, I didn't.

Q And you didn't ask?

A No, I didn't.

Q When Dr. Rolf said he didn't want you to handle the account, he said he wanted a partner or investment manager, didn't he?

A No, he said he wanted an investment manager.

Q He didn't mention a partner?

A No, he didn't. We already went over that.

Q Yes, we did. Perhaps I can refresh your recollection. At your deposition by Mr. Silverman you were asked this question, Mr.Stott, on page 22, line 8.

"Q At any time that you acted as a registered representative for Dr.Rolf, did you obtain any information as to Dr. Rolf's occupation, his income,net worth, investmen objectives, etc.?

"A No, sir. When I got the statement I made the phone call and I know he asked me how long I had been in the business and he said he had been dealing with the firm for four or five years or six or seven, I forget what it was, and that he liked us, but that he would like to have a more sophisticated or person that had been in the business longer, or a person that was a partner in the firm, and that he was going to look for an investment advisor,so I never got a chance to get in a word."

Does that refresh your recollection?

A Can I see it for a second?

Q Certainly, Mr.Stott (handing).

A Yes.

Q Does that refresh your recollection, Mr.Stott, that Dr. Rolf mentioned he liked to talk to a partner?

A No. As I stated before, Mr.Tessler, I said my confusion at the time when I gave that deposition was that the account was being handled by a partner and I got it confused in the question there. I believe I stated this before, and Number 2, a partner or anybody at Eastman Dillon cannot handle a discretionary account. Mr.Sterling could at the time because he had been doing this before the rule went into effect.

Q Didn't you testify in response to Mr. Silverman's question on Thursday of last week that the reason you didn't refer him to a partner was because a partner could not handle discretionary accounts in your firm?

A That's correct.

Q But you didn't deny, did you, Mr.Stott, that Dr. Rolf said he would like a partner?

A I don't know if I did or didn't, but he didn't say it.

Q Did Eastman Dillon at the time have mutual funds

A What do you mean?

Q Did they have a mutual fund available to their customers?

A What type -- just a mutual fund that they ran?

Q Yes.

A Not to my knowledge.

Q Did they have contacts with mutual funds?

A We have a mutual fund department.

Q They had a mutual fund department?

A Yes, sir.

Q Did you refer Dr.Rolf's account or did you refer your mutual fund department to Dr.Rolf?

A No.

Q Did you refer Dr.Rolf's account to any of your partners?

A No.

Q Did you discuss Dr. Rolf's account with any of your partners?

A No.

Q Did you ever say to any partner in Eastman Dillon, do you want to handle Dr. Rolf's account?

A No.

Q Did you ever discuss whether they wanted to?

A No.

Q You assumed they didn't, is that correct?

A I would ask a partner or anybody in the firm because I knew they weren't allowed to in the first place.

Q Or is it not so, Mr.Stott,that the reason you didn't refer Dr. Rolf to a partner in the firm or to the mutual fund department, not as you have now testified, but really because if you had done so then you wouldn't hav handled the account and you wouldn't have gotten the commissions?

A Absolutely not.

Q Of course.

By the way, in the period of 1969 through March of 1971, does it refresh your recollection if I told you that the firm of EastmanDillon made approximately $41,000 in commissions from transactions in Dr. Rolf's account?

A '69, '70 and '71?

Q That is correct, sir.

A I believe I heard that since I started to go back on the records.

Q It sounds pretty accurate?

A That figure sounds --

Q You were on a commission of approximately a thir is that correct?

A That's correct.

Q You made about $12,000 in commissions from Dr. Rolf's account in that period?

A Over a three-year period that is correct.

Q And you wouldn't have made a commission if a partner had handled the account, is that correct?

A If a partner or anybody else had handled the account, that is correct.

Q So it was important to you that Stott handle the account and not a partner?

A Absolutely not.

Q How many clients did you have in 1969, sir?

A About 150 or so.

Q Individuals?

A And some institutional clients.

Q What type of institutions, sir?

A Are you talking about other than Yamada?

Q If Mr. Yamada is an institution, Mr.Stott, yes, other than Mr. Yamada.

A I had a bank.

Q One?

A To the best of my recollection; and I had an insurance company.

Q One?

A One insurance company that owned a group of insurance companies. Yes, one.

Q Did you handle all of the insurance companies in that group or just one?

A All of them.

Q What else?

A I had some investment advisors.

Q Other than Mr. Yamada?

A Yes.

Q Other than Mr.Geddes?

A No, sir.

Q Any pension funds?

A Not to my recollection, sir.

Q Any other institutional-type clients that you can recall, Mr.Stott?

A Not to my recollection, sir.

Q Would you agree that different investors have different objectives?

A Yes.

Q And that the same stocks are not suitable for all investors?

A Yes.

Q And that whether a particular stock is suitable for a particular investor depends in large measure upon that particular investor's investment objectives?

A Yes.

Q For example, would you not agree that a widow who is receiving Social Security and has an investment portfolio would have a different investment objective than an up and coming young executive who is investing, in effect, extra cash in the market?

A Yes, they have a different objective, I would think.

Q That a retiree has a different investment objective than somebody who is still earning income?

A Most likely, yes.

Q When you say most likely --

A Well, you know, u nless he told the particular advisor he was working with that even though he was retired, I want to do this, but yes, in answer to your question, generally, yes.

Q That generally different investors have differen objectives?

A Yes, sir.

Q And that largely depends upon that particular investor's station in life?

A That is correct.

Q The amount of money he has in the market?

A I think that would be one of the criteria.

Q The income he is earning in addition to his investments?

A THat would be one of the criteria, I suppose.

Q Other sources of income?

A I suppose so.

Q You would agree, wouldn't you, Mr. Stott?

A Yes.

Q When we talk about different investment objectives, what are you referring to, Mr.Stott?

A Well, basically just what you said. A woman who is widowed would perhaps need more income and less appreciation than a younger man who has some earning power, he is earning a salary, and putting some money aside. He is putting money away generally to get a little growth for his retirement down the line.

Q So that certain investors are interested in dividend income?

A Yes.

Q Certain investors are interested in capital appreciation?

A Yes.

Q Not to the exclusion, but with a primary objective with respect to dividends.

A Could you rephrase that? I don't follow that.

Q A particular investor may be more interested in dividend interest than he is whether or not the price of the stock appreciates, is that correct?

A Yes.

Q And another type of investor may be more interested in capital appreciation as opposed to receiving dividends?

A That is correct.

Q And certain investors may be interested in liquidity?

A Yes.

Q That the stock is listed,as opposed to being traded,as opposed to being over-the-counter market?

A Yes.

Q Certain investors may be interested in speculating as opposed to dealing in safer-type investments?

A That is correct.

Q And other investors may be interested only what is popularly knowh as blue chip?

A Yes, sir.

Q Willing to sacrifice possible capital appreciation to safety of their investments, is that correct?

A Yes.

Q So isn't it important, Mr.Stott, in dealing with each particular investor to know what his particular investment objective is? Yes or no, sir.

A Yes.

Q And as a matter of fact, isn't that the basis for the Stock Exchange "Know your customer" rule?

MR. KELLY: I object to the question. The fact of the matter is, it isn't.

THE COURT: He may ask him his understanding.

Q What is your understanding of the basis of the Stock Exchange "Know your customer" rule, Mr.Stott?

A That you know as much as possible about your client concerning his job, his bank. When you open the account you have to fill in a form that requires you to put in the Social Security number, his bank. There is a question on the form if at all possible approximate income and things of that sort.

Q Perhaps you didn't understand my question. I said what is your understanding as to the basis -- I wasn't talking about mechanics -- of the Stock Exchange "Know your customer" rule?

MR. KELLY: Again I will object, your Honor, as to what the basis of it is. Does that mean what the cause of it is or -- I am not sure what the question is seeking to elicit.

THE COURT: Just one moment, please.

I will allow it in so far as it bears on his understanding of what the rule requires.

Go ahead.

A My understanding of the "Know your customer" rule are some of the things I mentioned there, to know as much as possible about the account and to know what the objectives are.

Q When Mr.Silverman asked you about the rule this morning you said that the purpose of the rule was to see that the securities in the account fit the needs of the client. Would you agree with that?

A Yes, that is the objective of the account.

Q And the objective of the rule, to your knowledge

A That's the same thing I said this morning.

Q And you stand by that statement?

A Yes.

Q To your knowledge, is there any exception to the rule when you are dealing with an investment advisor?

A To my knowledge, the exception to the rule is institutional clients or a client that has signed the power of attorney over to his investment advisor. Then it is the investment advisor that should know --

Q Is it your testimony that to your knowledge ther is an except such as you have just described written into the rule?

A I am sorry, what was that?

Q Do you know whether the exception that you just described is written into the rule?

A I am not sure of that, sir.

Q You don't know?

A I am not sure of that. I don't recall.

Q You testified in that respect this morning you considered when an investment advisor was present, you had no supervisory function with respect to that rule.

MR. KELLY: I object, your Honor. That was not the testimony this morning. As I say, there are so many various functions that have to be performed --

THE COURT: Sustained.

Q Isn't it also true, Mr.Stott, that different investment vehicles such as mutual funds, for example, have different investment objectives?

A Yes.

Q Such as the same investment objectives we talked about earlier?

A You mean growth or income?

Q Yes.

A Yes.

Q Capital appreciation?

A Yes.

Q Speculation?

A I don't know if there is any mutual fund --

speculation, that I don't know.

Q You don't know if there is any mutual fund that has as an investment policy the investment of their moneys in newly-issued stocks or stocks of young companies without established track records and earnings patterns?

A Publicly-held ones you mean? qublicly-held mutual funds?

Q If you want to limit it to that.

A There are some, yes.

Q And there are some that deal primarily in stocks that generate a lot of dividend income?

A That is correct.

Q And some that invest only in the blue chip stocks?

A Blue chip is a pretty broad term.

Q I will withdraw that. You would agree different mutual funds have different investment objectives?

A Yes.

Q Would you also agree, Mr. Stott, that if a customer wants to invest his money in a mutual fund the sam mutual fund may not be suitable for every investor?

A I would agree with that.

Q You would agree with that?

A Yes.

Q And that in determining whether or not a particular mutual fund is suitable for a particular investor you have to know the objective of the investor and the objective of the mutual fund. Would you agree with that?

A That is a fair statement.

Q Thank you.

Now, in the same vein, isn't it also true that investment advisors can also have different investment objectives?

A Not to my knowledge, no.

Q For instance, an investment advisor who deals substantially in over-the-counter new issues of young companies with little earnings or other records, would not be appropriate for investors interested primarily in safety. Would you agree with that?

A Repeat that. An investment --

(Question read.)

A Yes, I would agree with that.

Q Therefore, to be able to recommend an investment advisor for a particular investor, it would be helpful, would it not, to know the objectives of the investment advisor?

MR. KELLY: Your Honor, I will object to this question. It seems to me we are comparing apples and oranges. The objectives of an investment advisor as an investment advisor or the objectives of an investment advisor who is trading for himself, it seems to me, some distinction has got to be drawn.

THE COURT: I am going to allow it.

Go ahead.

THE WITNESS: Could you repeat that back?

(Question read.)

A My understanding of an investment advisor is a person who advises his particular clients as to what they should purchase or sell in their accounts depending on what the client's objective is.

Q Your testimony, if I understand it, is it would not be helpful to know the objectives of a particular investment advisor, is that correct?

A That's correct.

Q But it certainly would be helpful to know the objectives of a particular investor?

A Yes.

THE COURT: Mr. Tessler, standing by itself the question and answer isn't that helpful.

If you wish to create context --

MR. TESSLER: All right, your Honor.

Q If you were advising a particular investor to invest, who wanted to invest his money in a mutual fund, would it be helpful, Number 1, to know the particular objective of that investor?

A Yes, it would.

Q And in determining what mutual fund would be appropriate for that particular investor, I believe you testified earlier that it would be helpful to know the particular investment objectives of that mutual fund, is that correct?

A Yes.

Q So that you could match the two up?

A Yes.

Q But your testimony now, if I understand you right, is even knowing the particular investment objectives of the particular investor, it would not matter what the investment objectives of the invesment advisor are?

A That is correct, because I have investment advisors that have quite a few accounts and they might buy for one account a growth stock and the next day for another account they might buy them a stock that is pure income, or a bond.

Q How many thousands of stocks would you estimate are traded on Wall Street, Mr.Stott?

A Oh, boy. Actively traded or --

Q Traded.

A Gosh, 25,000.

Q Is it possible for any particular person to know the details, the ins and outs of each of those 25,000 stocks?

A I don't believe so.

Q How many stocks would you believe are active in trading?

A Probably 8000.

Q In your opinion, can any one person know all of the particulars about those 8000 stocks?

A I don't believe so, no.

Q So is it still your testimony that the particul interest of the investment advisor is of no importanace in determining whether he is suitable for a particular investor?

A It is up to the investor to find that out. If I want to an investment advisor, you know, if I went as a client, a customer, and I went to you as the investment advisor, I would tell you what I was looking to do and what objectives I was trying to achieve and I would feel it would be up to the investment advisor to tell that person at the time whether you could be helpful or not.

Q In April or May 1969 Dr. Rolf went to you and said fine me an investment advisor, didn't he?

A Dr. Rolf came to me in April of '69, when I called him, and asked me if I knew any investment advisors and that was it.

Q And you told him you did?

A I said I would let him know and I called him back and in a subsequent conversation gave him the names of two people to complement the three he was seeing in Boston.

Q At that time you didn't feel it was important to ask Dr.Rolf what his particular investment objectives were, did you?

A No, because --

Q No?

A No.

Q And you didn't ask him, is that your testimony?

A I didn't ask him.

Q In May of 1969, or April of '69, when you gave Dr. Rolf Mr. Yamada's telephone number, you knew he had managed investment accounts at Kuhn, Loeb, I believe you testified?

A That's correct.

Q Did you know what types of accounts?

A No, I didn't.

Q Did you know whether they were institutional accounts?

A No, I didn't.

Q Whether they were individual accounts?

A No, I didn't.

Q Whether they were on margin or fully paid?

A No, I didn't.

Q And you knew that Mr. Yamada had left Kuhn, Loeb and was in the process of organizing a hedge fund, didn't you?

A When I first met Mr. Yamada?

Q When you recommended or gave Mr. Ayamada's telephone number to Dr. Rolf.

A I knew Mr. Yamada was in the process of trying to -- what did you say?

Q At the time that you gave Mr. Yamada's telephone number to Dr. Rolf, you knew, did you not, that he was in the process of organizing a hedge fund?

A Yes, s did.

Q What is a hedge fund, Mr.Stott?

A A hedge fund is a fund that can buy or sell stocks, margin them and short.

Q It uses high leverage techniques, is that correct?

A Sometimes, yes.

Q Puts and calls?

A I don't know about puts and calls.

Q Do you know if it did or didn't?

A If what --

Q If a hedge fund does or does not use put, calls or option techniques?

A I don't know.

Q It buys cash and on margins, you knew that?

A Yes.

Q It makes short sales, is that correct?

A That is correct.

Q As a matter of fact, wasn't it common knowledge, in Wall Street in 1969, that the very nature of a hedge fund was a speculative investment vehicle?

A No, not in my opinion, no.

Q Would you say that an investment vehicle that operates on margin is not speculative?

A I have investors that buy on margin that are not a bit speculative.

Q If you buy on margin it means you buy on borrowed money, doesn't it?

A Yes.

Q On top of all the other costs of investment you have interest costs?

A Yes.

Q A hedge fund that buys on margin by its very nature is interested in capital appreciation, is that not correct?

A Yes, capital appreciation.

Q Substantial capital appreciation, more than to offset the interest cost?

A Yes, capital appreciation.

Q In order to obtain substantial capital appreciation a hedge fund deals in puts and calls and buys on margin?

A I don't know about puts and calls.

Q Buys on margin?

A Yes.

Q And short sales, for instance, are made in an attempt to make a substantial profit out of a transaction, is that correct?

A That is correct.

Q And you knew that that was the kind of vehicle Mr. Yamada was interested in at the time you gave Dr. Rolf his telephone number?

A I knew that was one of the things Mr. Yamada was doing.

Q What else was he doing that you knew of?

A I knew of the investors that were entrusting moneys to Mr. Yamada, Mr. Dilworth and Mr. Byrne and Mr. Marusi and Mr. Funston, the president of the New York Stock Exchange.

Q Did Mr. Funston entrust his personal moneys in to Mr. Yamada or did he put his moneys into the hedge fund?

A I found out later into the hedge fund.

Q How about Mr. Byrne?

A I don't know whether he went to the hedge fund.

Q How about Mr. Dilworth?

A I don't know. I know he invested with Mr. Yamada.

Q Would it surprise you if I told you those three individuals all invested into the hedge fund?

A Not really, no.

Q It wouldn't surprise you, yes or no, sir?

A Yes, in one case it would, yes.

Q Did you know how many individual accounts Mr. Yamada had at the time you gave Dr. Rolf's telephone number --

A How many individual accounts?

Q Yes, sir.

A No. I knew he had some but I didn't know how many.

Q Did you know he had ten?

A No, I didn't know a figure, no.

Q Five?

A As I said, I didn't know a figure.

Q More than one?

A I thought he had more than one.

Q You weren't sure if it was less than five?

A No.

Q How much money did you understand Mr. Yamada to have raised in his hedge fund at that time?

A I believe the figure I was told that Mr. Yamada was managing, in the neighborhood of twelve to $14 million.

Q In the hedge fund?

A No, managing was the word.

Q Did you know how much money was in the hedge fund?

A No, I didn't.

Q Did you ever ask Mr. Yamada?

A No, I didn't.

Q And I believe if I understood you correctly it isyour testimony when you gave Dr. Rolf Mr. Yamada's phone number, at the end of April 1969, you didn't know his investment objectives?

A I didn't know Dr.Rolf's --

Q Dr. Rolf's investment objectives.

A When I gave Dr. Rolf Mr. Yamada's and Mr. Geddes' phone number in April of '69, no, I didn't know Dr.Rolf's investment objectives.

Q And you didn't ask him?

A No. In the first conversation, as I told you, I kind of introduced myself --

Q Did you ask him? That is my question.

A No.

Q And at the time you gave Dr. Rolf Mr. Yamada's telephone number, you didn't know Mr. Yamada's investment objectives?

MR. KELLY: I object to that question.

THE COURT: Just a moment.

Mr. Kelly.

MR. KELLY: I object to the question unless it is specified for who his investment objectives were evidenced for.

THE COURT: Sustained.

Q At the time you gave Dr. Rolf Mr. Yamada's telephone number at the end of April 1969, did you know the type of stocks that Mr. Yamada was interested in?

A No, I didn't.

Q And you didn't ask him prior to that time, did you, sir?

THE COURT: Did you know Mr. Yamada's track record?

THE WITNESS: Yes, I had talked to Mr. Ely, who was his immediate superior at Kuhn, Loeb and knowing the type of firm Kuhn, Loeb is, and what Mr.Ely told me Mr. Yamada was very well thought of there, and that he was a very good analyst and they were very sorry to lose him; they liked what he did.

THE COURT: Are you saying that that was the extent to which you did know the track record?

THE WITNESS: Yes, from his immediate superior.

THE COURT: Did you ask Mr. Ely the kind of investment areas in which Mr. Yamada was inclined to direct his clients, whether he had any special interests in any particular kind of investments, particular kind of funds, whether he tended to be conservative or whether he tended to be in another direction? Did you ask any of those kind of details other than saying generally what do you think of this fellow Yamada?

THE WITNESS: That he was very honest and it is the type of stock Kuhn , Loeb recommends, and the type of firm it is, a very old line, high-type firm.

THE COURT: Given that, did you say to him, he has been with you a while, he is leaving you, did you find him to be old line, conservative, high-type while he was there, did he have any inclination to go off in another kind of direction?

THE WITNESS: This was some time in the beginning of April, the end of March in '69. I just mentioned that I met a Mr. Yamada who was with his firm and I understood he was leaving and he just filled me in on Mr. Yamada, his background and how well the firm thought of him, and that he was an officer of the firm and they hated to lose him.

THE COURT: That is pretty much what he told you?

THE WITNESS: Yes, sir.

THE COURT: Go ahead.

Q With specific reference to the Court's question, Mr.Stott, am I to understand then the answer to the question is no?

THE COURT: He probably doesn't remember the question.

THE WITNESS: I don't.

Q Did you ask Mr. Ely specifically what types of stocks Mr. Yamada was investing in?

A No, I didn't.

Q Did you ask Mr. Ely specifically whether Mr. Yamada was deemed to be conservative or speculative in his investments?

A No, I didn't.

Q Did you ask Mr. Ely specifically what type of accounts Mr. Yamada managed?

A He mentioned to me that he dealt with institutional type clients of the firm.

Q That was the extent of it?

A Yes, sir.

Q Did you know, Mr. Stott, that one of Mr. Yamada's functions over at Kuhn, Loeb was to deal with special situations?

A No.

Q You didn't ask Mr. Ely that?

A No, I didn't.

Q Did you know if Mr. Yamada while at Kuhn, Loeb investigated new issues?

A No, I didn't.

Q And you didn't ask that either?

A No.

THE COURT: Or were realizing the objectives of people who were interested in appreciation of their investment, did you inquire about that?

THE WITNESS: No. You see, your Honor, my understanding when Dr.Rolf asked me did I know any investment advisors, he said he was seeing three investment advisors, did I know any. I said I know two investment advisors and I gave him the names and the phone numbers. I was never asked, your Honor, by the doctor what type of fellows are these, or anything of that sort.

THE COURT: How many years had Dr.Rolf had an account at the Eastman Dillon firm?

THE WITNESS: About six years, I believe.

Q As a matter of fact, Mr.Stott, isn't it true that what you were really interested in was steering Dr. Rolf to a friendly investment advisor?

A Absolutely not.

Q One who would generate a lot of commission business for you?

A No, sir.

Q And that as long as that criteria was met, you didn't really care who that investment advisor was?

A That is totally untrue.

Q That is not the reason you didn't recommend a partner of Eastman Dillon?

A It is absolutely untrue.

Q Or the reason you didn't recommend Dr. Rolf to the mutual fund department?

A No.

Q As a matter of fact, Mr.Stott, in April of '69, you did know Dr. Rolf's investment objectives, didn't you?

A No. How did I know his investment objectives?

Q Had you ever discussed them with Mr.Sterling?

A No.

Q You never discussed Dr. Rolf with Mr.Sterling?

A No.

Q Was Mr. Sterling available to discuss the matter with, when the account was assigned to you?

A No.

Q Did you know where he was?

A I was told he was in the hospital.

Q Did you call him up?

A No, I didn't.

Q Did you go see him?

A No. Mr.Sterling was not allowed to have any visitors.

Q Did you discuss Mr.Sterling with Dr.Rolf, with

Mr.Sterling's secretary?

A No.

Q Had you ever discussed Dr.Rolf with Mr.Sterling prior to April of '69?

A No.

Q By looking at the stocks in Dr. Rolf's portfolio in April of 1969, you could tell what stocks he had -- by looking at his portfolio, that is, you knew what stocks he had?

A Yes.

Q You did look at that statement I believe you testified.

A The monthly statement, yes, sir.

Q Isn't it also a fact that by looking at that statement you knew that much of Dr. Rolf's portfolio consist of stocks that had been particularly, specifically recommended by Mr. Sterling?

A Quite a few of them, yes.

Q How many of them?

A I don't know.

Q At least 10 out of 23, hadn't they?

A I honestly don't know. I don't have the statement in front of me.

MR. TESSLER: That has been offered in evidence a flash by the defendant. May I see that?

MR. KELLY: I take it all those securities were both under the discretionary authority by Mr. Sterling?

MR. TESSLER: You are perfectly right, sir.

BY MR. TESSLER:

Q Would you pleas read aloud the first sentence of Defendants' Exhibit ZZ?

A "For internal use only. Distribution outside the --"

Q This one.

A " -- in addition to the five stocks recommended and discussed in our January 1 bulletin, I am listing below stocks which I have been recommending for capital tain type accounts at various sales meetings in recent months.

Q What is a capital gain type account?

A An account that wants capital appreciation on his money.

Q As opposed to what, sir?

A Somebody that wants more income-oriented.

Q And you knew that Dr. Rolf's account was a capital gain account, didn't you?

A Not really. I was never told it by the doctor. Are you talking about looking at the account?

Q Yes, sir.

A I suppose one would have to assume that, but I never really put too much --

Q I show you Plaintiff's Exhibit 7, which is a listingof Dr. Rolf's security position as of April 30, 1969. I ask you to look at it.

A Right.

Q Of the 23 stocks that are on that list, ten were recommended by Mr.Sterling. Is Anaconda on that list?

A Yes, it is.

Q Avnet?

A Yes, it is.

Q Buttes Gas?

A Yes.

Q Cities Service?

A Yes.

Q Glen Alden?

A Yes.

Q International Industries?

A Yes.

Q Loews Theatre?

A Yes.

Q Loews Theatre warrants?

A Yes.

Q National General?

A Yes.

Q Penn Central?

A Yes.

Q Would you agree with me, Mr.Stott, as Mr. Sterling used the term,Dr. Rolf was an account that was used for capital appreciation?

MR. SILVERMAN: He has testified how Mr. Sterlin used the term.

THE COURT: Are you talking about how Mr. Sterling used the term?

MR. TESSLER: Yes, your Honor.

THE COURT: Set it up in an assumption fashion and then put the question. Assuming that Mr. Sterling's definition of the term was thus and so, if you wish to put it.

Q Do you know what Mr. Sterling meant when he recommended stocks for accounts interested in capital appreciation?

A Yes.

Q What did he mean, sir?

A Have growth and capital appreciation oriented, looking for a big capital gains.

Q As opposed to what?

A As opposed to an income-oriented account, which would be looking for -- not interested in growth, more interested in income received on their investment.

Q Would you agree, Mr.Stott, on the basis of your 12 years of expertise in Wall Street at that time and on the basis of the fact that at least ten of the twenty three stocks in Dr. Rolf's portfolio on April 30 were the same stocks that had been recommended for capital appreciation by Mr. Sterling earlier that year, that Dr. Rolf had an account that was primarily interested in capital appreciation?

MR. SILVERMAN: I object, your Honor.

THE COURT: It is two questions in one, but if you can handle the question, you can answer.

A I would say looking at the stocks that were in Dr.Rolf's account, that it was certainly very capital gains oriented.

MR. SILVERMAN: Your Honor, I move to strike it. He looked at one monthly statement and he is giving us an opinion of six years of the account.

THE COURT: We will assume the answer is limited to the one monthly statement he reviewed the month before calling Dr.Rolf.

Q With that qualification, can you answer the question?

A I believe I did.

THE COURT: He said it was so.

Q How would you characterize the stock in Dr. Rolf's portfolio as of April 30, 1969?

MR. SILVERMAN: I object to any characterization by this witness of anything in Dr. Rolf's portfolio.

THE COURT: Too general. Sustained.

Q In your opinion, Mr. Stott, how would you relate the stocks in the portfolio on April 30, 1969, with respect to dividends?

MR. SILVERMAN: I object to any opinion evidenced from this witness. He certainly is not qualified to give opinion. He is an interested party. We are interested in facts, not his opinion.

THE COURT: That doesn't bar him from giving opinions, Mr. Silverman.

MR. SILVERMAN: I thought he is limited to testifying as to matters upon which he has personal knowledge and that opinions are reserved to competent experts who are officers of the Court and give independent testimony.

THE COURT: That has been broadened now.

MR. SILVERMAN: I think it is Rule 701, your Honor. And, I think I am wrong based on that.

I withdraw my objection.

A Would you repeat the question?

MR. TESSLER: Will you read the question?

(Question read.)

THE COURT: You are looking at Exhibit ZZ?

MR. TESSLER: Exhibit 7, your Honor.

MR. SILVERMAN: Your Honor, may I ask whether 7 lists the dividend? I know we have an exhibit that lists whether they paid dividends. He is going to state whether it is dividend paying.

A This has number of shares, cost --

THE COURT: We will leave it to Mr. Tessler to decide which document he wants to use.

Q Can you look at that list of stocks, Mr.Stott, and make any statement whether those were the stocks that somebody who was interested primarily in income would invest in?

A I wouldn't assume so, no.

THE COURT: You would not?

THE WITNESS: Assume so,that somebody interested in dividend would buy these type of securities.

Q On that list are listed several conglomerates, are there not?

A Yes.

Q Which ones?

A I believe Avnet was, I believe Glenn Alden was, I believe Loews was.

Q Leasco?

A I believe Leasco was, and I believe National General might have been. I am not quite sure on that one.

Q There are also oil stocks on that lease, are there not?

A Yes, sir.

Q Would you agree that that list is the type of portfolio that would be maintained by an investor who was interested in aggressive capital appreciation?

MR. SILVERMAN: Objection.

A Yes, I would.

MR. SILVERMAN: I move to strike.

THE COURT: Overruled.

Q That is not a widow's portfolio, is it, Mr. Stott?

A You mean a widow in the true sense of the word?

Q Yes.

A No.

Q That is not a portfolio of somebody who is primarily interested in safety, is it?

A No, sir.

Q That is a portfolio, would you agree, that is maintained by somebody who is interested primarily in capital appreciation, who wants to be aggressive?

A Yes.

Q And who is willing to take risks?

A Yes.

Q And you knew that or could have known that at the time you gave Dr. Rolf Mr. Yamada's phone number. Don't you agree, sir?

A I didn't know it -- no, I didn't know it.

Q But you could have because you had that information available?

A I guess I could have, yes.

MR. TESSLER: Your Honor, would it be appropriate to take five minutes?

THE COURT: All right.

(Recess.)

Q Mr.Stott, have you ever heard the term used on Wall Street "gunslingers"?

A I might have. Not to my recollection.

Q Isn't it a fact, Mr.Stott, that in the late sixties and the early seventies the term "gunslinger" was popular as an epithet to indicate a particular brand of private or public fund manager?

MR. KELLY: Of what?

MR. TESSLER: Private or public fund manager.

A I don't know, Mr.Tessler.

Q You have no recollection of hearing the term?

A Not to the best of my recollection. I don't know, sir.

Q After you had given Dr.Rolf Mr. Yamada's telephone number, did you then hear from Mr. Yamada or Dr. Rolf advising Dr. Rolf had retained Mr. Yamada as his investment advisor?

A I believe I heard from Dr. Rolf.

Q Prior to your hearing from Dr. Rolf, did you act, or before or shortly after you gave Dr.Rolf Mr. Yamada's telephone number, ever tell Mr. Yamada what you had done?

A No, after I gave Dr.Rolf Mr. Geddes' and Mr. Yamada's phone number, I called both these gentlemen and told them they might be hearing from a Dr. Rolf from Cleveland, Ohio.

Q You called Mr. Yamada and told him he might be hearing from Dr. Rolf in Cleveland, Ohio?

A Yes.

Q Did you tell him what Dr.Rolf wanted to talk about?

A I believe I might have said, you know, about the investment advisory account.

Q It might have concerned an investor who was looking for an investment manager?

A Something on that order.

Q Did you tell Mr. Yamada how much money the investor had in the market?

A No.

Q Did Mr. Yamada ask you?

A No, he didn't.

Q Did you tell Mr. Yamada what type of stocks the investor was interested in?

A No.

Q Did Mr. Yamada ask?

A No, he didn't.

Q Did you tell Mr. Yamada in words or substance if he got the account you expected him to do trading through Eastman Dillon?

A No, I didn't.

Q You never said a word about it?

A No, I didn't.

Q After Dr. Rolf advised you that he had retained Mr. Yamada, Mr. Yamada called you, didn't he?

A After Dr. Rolf told me, Mr. Yamada called me a day or two later and wanted to enter some orders.

Q What did you say?

A I said I would send up a form for Dr.Rolf and Mr.Yamada to sign before we could do any business in the account.

Q What else did Mr. Yamada say?

A Nothing. He said, you know, send the form up which I did. He sent it to Dr. Rolf, I guess.

Q What else did he say to you, sir?

A That was about it.

Q That is all you recall?

A That is all I recall, sir.

Q Prior to that telephone conversation, I believe you testified that there was an understanding you had with Dr.Rolf that Mr. Yamada was to place orders wherever possible with Eastman Dillon through you?

A Could I see that?

Q So what, sir? Can you answer the question without looking at it?

A Repeat the question.

MR. TESSLER: Would you read it?

(Question read.)

A Dr. Rolf had said to me that he wanted his account to stay at Eastman Dillon because it had been there for some six or seven years and he would like the account to stay there.

Q And that was the understanding you had regarding Dr. Rolf's wishes prior to the time that Mr. Yamada called and told you he wanted to place some orders, is that right?

A Yes.

Q Did you --

A That he wanted to keep his account at Eastman Dillon.

Q Did you tell Mr. Yamada that Dr. Rolf wanted to keep the account at Eastman Dillon?

A Not to my recollection, sir.

Q Did you ever tell Mr. Yamada that?

A Not to my recollection, sir, no.

Q Even though Dr. Rolf had said that is what he wanted, you never felt it incumbent upon you to tell the investment advisor recommended by you that that is what the investor wanted?

A Dr. Rolf --

Q Can you answer that yes or no?

A I am sorry, will you repeat the question?

(Question read.)

A No.

Q After Mr. Yamada took over as Dr. Rolf's investment advisor in May of 1969 for the period of the next several months, to the end of the year, he proceeded to liquidate the portfolio as of April 30, 1969, did he not?

A As it existed on April 30 did he proceed to sell some of the securities?

Q Did he proceed to sell all of them?

A Yes.

Q And those sales were made through you?

A I believe they were.

Q That is your best recollection?

A Yes.

Q And you got the commission on those sales?

A Yes.

Q And so since the sales were made through you, you knew that the portfolio was being liquidated?

A I knew the securities were being sold out of the doctor's account, yes.

Q And you spoke with Mr. Yamada about that, didn't you?

A About what?

Q About the sale of the securities out of the doctor's account?

A No, I didn't. He just would call and give me the order and I would call him back and give him the execution.

Q To give you the order, you spoke with Mr. Yamada That is my question.

A I spoke to Mr. Yamada as far as taking orders, yes.

Q Had any of the securities in Dr. Rolf's adcount as of April 30, 1969, been purchased by you?

A As of April 30?

Q Yes.

A No.

Q Had any securities been sold for Dr. Rolf as of that date by you?

A No.

Q In other words, from the time Mr. Sterling ceased to be active in handling Dr. Rolf's account and the time Mr. Yamada took over the management of that account you had nothing to do with the execution of any orders?

A That is correct.

Q Do you know if any orders were executed by Eastman Dillon during that period?

A No, I don't, sir.

Q During the period that Mr. Yamada was liquidating the doctor's portfolio as it existed on April 30, did you ever express to Mr. Yamada any dissatisfaction with what he was doing?

A No.

Q As a matter of fact, you didn't disagree with him, did you?

A Number 1, he was an investment advisor --

Q Did you disagree with him, sir?

A I had no opinion.

Q Do you know that on April 30, 1969, Mr. Stott, the price of a share of Anaconda was 52-3/8 and on January 1, 1970, it was 30-1/8?

A No, not really.

Q Assuming that the figures I have given are correct, would you agree that it was appropriate then to sell Anaconda while the stock was declining?

MR. SILVERMAN: Again I object to this, your Hono The last time he asked opinion evidence and --

THE COURT: Yes, sustained.

Q Did you know the price of the shares in the doctor's portfolio on April 30, 1969, as they were in relation to the price at which the doctor had bought them?

A No.

Q Did you ever look it up?

A No, I didn't.

Q Did you ever think that was important?

A Not when an investment advisor was handling the account, no.

Q Even though the stocks had been purchased on the recommendation of a partner of your firm?

A No, I didn't.

Q Do you know, Mr.Stott, whether the price of the stocks in general in the doctor's portfolio on April 30, 1969, was higher or lower than the price of those stocks on January 1, 1970?

A Well, I would have to say that knowing the way the stock market was performing I would have to assume that they were lower.

Q Lower when, sir?

MR. SILVERMAN: I object and move to strike. Speculation.

THE COURT: Strike it.

Q Would it surprise you, Mr.Stott, if I told you that with respect to each and every stock in Dr.Rolf's portfolio on April 30, 1969, with the exception of one, the price of those securities was lower on January 1, 1970?

MR. SILVERMAN: Objection.

THE COURT: Sustained.

Q In any event, Mr.Stott, you didn't disagree or express disagreement with Mr. Yamada's actions as he liquidated Dr.Rolf's portfolio?

A I didn't express anything to Mr. Yamada concerning any trades in Dr. Rolf's account.

Q Although you knew about all of them?

A Knew about all the trades in Dr. Rolf's account?

Q Yes, all the trades in Dr. Rolf's account.

A From May '69 through '71?

Q Yes, sir.

A I didn't know about a lot of them when they happened. I would find out about them later when they delivered to the account. I didn't know when they took place.

Q You found out about them later when they were delivered to the account?

A Yes.

Q Actually you found out about them a lot sooner, didn't you?

A What do you mean?

Q Didn't you.you find out about all the trades a lot sooner than when they were delivered?

A There would be a letter, instructions coming in to receive versus payment or receive free or deliver out to an account, but these letters would come in after the trade took place at whatever firm they took place.

Q That is the first knowledge you had of these trades that took place outside Eastman Dillon which took place?

A That's correct.

Q As a matter of fact, Mr.Stott, didn't you receive copies of all confirmations of trades made for Dr.Rolf's account no matter where those trades took place?

A No.

Q What houses did you receive confirmations from?

A That would be pretty hard to recall.

Q Did you receive confirmations of trades that took place in Provident Securities?

A As I said, Mr.Tessler, that would be hard to recall, and copies of trades I did receive would be after the fact. They would be confirmations of transactions already taken place.

Q That is not my question, Mr.Stott. My question is, did you receive copies of confirmations?

A On a few occasions, yes.

Q From Provident Securities?

A I do not recall.

Q Woodcock, Moyer?

A I don't recall.

Q Wasn't it the doctor's instructions to Mr. Yamada that you knew about, that you were to receive copies of all confirmations?

A I don't believe so, no.

Q Did you receive copies of some confirmations?

A A few.

Q What did you do when you received copies of those confirmations?

A When I received a copy of a confirmation I would notify the margin clerk who was in charge -- he is in charge of a lot of accounts, but the one Dr. Rolf's account fell under that I was sending over a confirmation on, you know, to be prepared to receive the stocks in or to deliver stocks out, whatever the case may be.

Q Did you ever call Mr. Yamada and say to him in words or substance, "Aki, why are you sending me confirmations, you know I am only an order-taker, I have nothing to do with this account"?

A They were --

Q Did you, sir?

A They were delivery instructions. That is the way I took these confirmations, to notify me a trade had been made so I could prepare to comply with their wishes to deliver stocks out or receive stocks in.

Q Did you ever call Mr. Yamada and say, "Aki, why are you sending me copies of confirmations, you know I have nothing to do with the account"? Yes or no.

A No.

Q But that is what your contention is, that you had nothing to do with it?

MR. KELLY: I object to the question.

THE COURT: Sustained.

Q Do you contend that your only function with respect to Dr. Rolf's account was to act as, to use your word, an order-taker?

A Yes, that is what I did for the account.

Q That is what you have testified here?

A That is correct.

Q And that is what you told Dr. Rolf in Exhibit E; the letter you wrote to him?

A That is correct.

Q And you say that is what you told Dr. Rolf in numerous telephone conversations?

A That is correct.

Q That you had nothing to do with the account, other than to add up the debits and the credits?

A And make sure that stocks were received in and delivered out, and to check his monthly statements and his confirms and to enter orders when I received them from Mr. Yamada.

Q As a matter of fact, if I understand your testimony, Mr.Stott, isn't it your claim that is what Dr. Rolf expressly told you he wanted you to do, to act as an order-taker?

A Yes, that would basically be it, to keep on top of the account, yes.

Q In fact Dr. Rolf told you he didn't want you to manage the account?

A He told me that in the phone conversation. That is when he asked me if I knew any investment advisors.

Q Dr. Rolf didn't feel you had enough experience to manage the account?

A That is basically it.

Q That is why he wanted an investment advisor?

A Yes.

Q And you knew that was the doctor's wishes at the time you gave him Mr. Yamada's and Mr.Geddes' phone number?

A Yes, to complement the three other advisors he was going to see.

Q That he told you he was going to see?

A Yes.

Q Do you know for a fact that he ever saw them?

A I don't know, sir.

Q You didn't agree with Dr.Rolf's assessment of your experience, did you?

A Well, no.

Q You thought you were competent to manage the account?

THE COURT: I think we have been through this.

Q And in fact, Mr.Stott, during May of 1969, through March of 1971, you in fact did assist Mr. Yamada in the management of that account, did you not, sir?

A That is absolutely untrue.

Q Absolutely untrue?

A Absolutely untrue.

Q I believe, Mr. Stott, that you agreed at Mr. Kelly's examination that you recommended to Mr. Yamada the purchase of Carter-Wallace, is that true?

A I recommended to --

Q Is that true, sir, yes or no?

A Yes, the firm was recommending Carter-Wallace.

Q Did you recommend Carter-Wallace to Mr. Yamada?

A I sent him up the recommendation, yes.

Q Can you answer that yes or no?

A Yes.

THE COURT: To the doctor directly?

THE WITNESS: To Mr. Yamada.

Q You didn't recommend any stocks to the doctor directly, did you, Mr.Stott?

A No.

Q I believe you also testified that you recommende the purchase of Food Fair Properties to Mr. Yamada. Yes or no.

A That's correct.

Q And Interthem, yes or no?

A I sent a prospectus on that one.

Q Did you recommend to Mr. Yamada he purchase Intertherm?

A I probably did, yes.

Q West Coast Productions?

A Yes.

Q Standard Oil of New Jersey?

A Yes.

Q They were recommendations made by Blyth

EastmanDillon?

A That's correct.

Q In addition to that you also recommended to Mr. Yamada he purchase Simplex Wire & Cable?

A I didn't. Mr. Yamada called me up concerning a newspaper article in the Wall Street Journal that stated my father, with a group of investors, had bought a majority interest in a company in Cambridge, Massachusetts, called Simplex Wire & Cable.

Q Did you recommend the purchase to Mr. Yamada?

A No. Mr. Yamada questioned --

Q Yes or no?

A Wait a minute, that is --

MR. TESSLER: Your Honor, if the witness can answer yes or no, I think he should be instructed to answer yes or not.

THE COURT: If the question is specific enough you can answer it yes or no, I dare say. The question is whether or not you recommended that particular stock to Yamada for plaintiff's account.

MR. TESSLER: For purchase, your Honor.

THE COURT: For purchase for plaintiff's account.

MR. TESSLER: I didn't add for plaintiff's account.

THE COURT: All right.

THE WITNESS: I was trying to give a little background, your Honor. This article was in the paper and Mr. Yamada questioned me on this, is this your father, and I said yes, it is, and he asked me what they intended to do with the company and I told him they intended to sell --

THE COURT: You told us before what you said in that discussion.

Assuming that now Mr. Tessler's question is without regard to Dr.Rolf's account at this point, did you recommend to Yamada this security for purchase?

THE WITNESS: I would suppose yes, after I talked with Mr. Yamada.

Q Yes, sir? Is that your answer?

A Yes.

Q And you knew Mr. Yamada was purchasing these securities on your recommendation?

A I didn't know if he was purchasing them only on mine.

Q Partially on yours?

A Partially, I suppose.

Q With respect to Carter-Wallace, did you tell Mr. Yamada what business that company was in?

A Mr. Yamada --

Q Did you tell him, sir?

A I don't recall, honestly, Mr.Tessler.

Q Did you tell him how old the company was?

A That was in a writeup. A lot of information was in a writeup.

Q Did you tell him, sir?

A Not to my recollection.

Q Did you tell him what its earnings were for over the past three years?

A I believe I did.

Q Did you tell him what its dividends were?

A That I don't recollect.

Q What business was Carter-Wallace in?

A Carter-Wallace is a pharmaceutical firm. Their most famous product would be Carter Little Liver Pills, I guess.

Q Did you tell him the prospects of the company?

A That was in the writeups.

Q Did you send him the writeups?

A Yes.

Q With respect to Food Fair Properties, did you tell Mr. Yamada what the business of that company was?

A He had a writeup of every one of these and then we would discuss anything he might have a question on.

Q Did you send Mr. Yamada a writeup prior to your recommending these stocks?

A Yes, I did. I would tell him in the morning, if I happened to get him on the phone,or the girl, as I stated before I would give them the buy and sell list, and tell them of any new research reports we have and I was sending it up to him.

Q It is your testimony that with respect to each of these six stocks you first sent Mr. Yamada a writeup before he purchased the stocks?

A Writeup or prospectus,to the best of my recollection, yes, sir.

Q What did you tell him about Intertherm?

A I believe that was a new issue, and I sent him a prospectus and told him it was a new issue, that we were one of the underwriters.

Q What did you tell him about the company, anythin

A No, that was basically it.

Q What type of company was Intertherm?

A I believe Intertherm, thinking back now, I believe they made radiation equipment for mobile homes, I believe.

Q You knew Mr. Yamada was interested in mobile homes because he bought Monarck, is that correct?

A I hadn't thought about it.

Q Was it an old company?

A I don't recollect now, sir. That was in 1969.

Q Was this the first time the company went public?

A I believe it was. There was a prospectus on it, yes.

Q Did it pay any dividends?

A I don't believe it did.

Q Did it have any earnings?

A That I don't recollect.

Q What is your best recollection?

A I think they earned money, yes, sir.

Q More than a hundred thousand?

A I don't know.

Q How would you compare Intertherm to Standard Oil of New Jersey, Mr.Stott?

MR. KELLY: I object to that question, your Honor.

THE COURT: Sustained.

Q After you sent Mr. Yamada the writeup, as you testified to and after you had your telephone conversations, you knew then that Mr. Yamada was purchasing these stocks for Dr. Rolf, is that not correct?

A Would you restate the question? Would you repeat the question?

Q If I understand your testimony. you testified that you sent Mr. Yamada a writeup or a prospectus on these companies, and then had telephone conversations with Mr. Yamada in which you recommended the purchase, is that correct?

A Yes.

Q And Mr. Yamada then purchased these shares for Dr. Rolf's account, is that correct?

A I believe yes. The record will show they were purchased.

Q What is your best recollection? Did he purchase the stock?

A Yes.

Q Through you in fact?

A Yes.

Q The order was placed through you and you made the commission?

A Yes.

Q And you knew, did you not, Mr.Stott, that the purchase was being made for Dr.Rolf's account partially at least on your recommendation or the recommendation of Eastman Dillon?

A Well, when I recommended any one of these stocks to Mr. Yamada I recommended it to him as an investment professional and --

Q You recommended their purchase, didn't you?

A I recommended -- I brought to Mr. Yamada's attention that we were recommending these stocks.

Q And you recommended that Mr. Yamada purchase the stocks, did you not, sir? That was the purpose of your phone call?

A When you are dealing --

Q Can you answer yes or no?

A No, I can't.

MR. TESSLER: I withdraw the question.

Q There came a time that you knew Mr. Yamada was purchasing stocks for Dr.Rolf's account which had been recommended to him by you, is that correct?

A Yes.

Q And that he was making these purchases after you recommended the stocks in direct contradiction to the instructions from Dr. Rolf that you were not to manage the account, is that correct?

A That is not correct.

THE WITNESS: Your Honor, that is not an answer you can give yes or no.

THE COURT: He said that is not correct.

MR. TESSLER: I heard him, your Honor.

Q Did you ever bother to find out how Dr. Rolf did with respect to the stocks that you recommended to Mr. Yamada? Yes or no.

A I guess I was aware of it.

Q How did he do?

A I really don't know, not right now. If I had my records here --

Q Would it refresh your recollection if I told you that on the purchase of a thousand shares of Carter-Wallace Dr. Rolf lost $1848?

A If that is what --

Q Does that refresh your recollection?

A Not really. If that is what the records show I guess that is correct.

Q Does it refresh your recollection to tell you that on the purchase of 800 shares of Intertherm for a purchase price of $25,872 Dr. Rolf lost $3910?

A Again, if that is what the records show. I don't have the figures.

Q That is what the records show, Mr. Stott. I want to know if it refreshes your recollection that the doctor lost money on that security?

A Evidently he did.

Q Does that refresh your recollection, sir?

A I guess it refreshes my recollection.

Q Does it refresh your recollection, Mr.Stott, that if I told you that on the purchase of 5000 shares of West Coast Productions, for an aggregate price of $69,187, Dr.Rolf lost $22,138?

A I guess it is my recollection he did lose mony on it, yes.

Q Does it refresh your recollection, Mr.Stott, if I told you that on the purchase and sale of a thousand shares of Standard Oil of New Jersey, which had a cost of $733870, Dr.Rolf lost $1848?

A I guess it refreshes my recollection that he los money, yes.

Q Does it refresh your recollection that on the purchase of 1100 shares of Simplex Wire & Cable of which 900 shares were remaining in the account as of March 31, 1971, valued as of that date, the doctor's investment declined $9426?

A I guess it refreshes he lost money, yes.

Q So in retrospect wouldn't you agree the good doctor was right in saying that you were not to manage the account?

A No, I wouldn't, Mr. Tessler, because you have to realize the market at that time, as you have shown me by comparing statements of April 30, compared with January 1 the next year, all the stocks were down, the market had quite a drastic drop during that period of time.

MR. SILVERMAN: Your Honor, I move to strike that.

MR. KELLY: I object, your Honor.

THE COURT: Strike the answer. The objection to the question is sustained.

Q Did you ever tell Dr. Rolf, Mr.Stott, that Mr. Yamada was purchasing and selling stocks in his account that were recommended by you?

A No.

Q Was one of your fields of specialty, Mr.Stott, the oil stocks?

A Not really, no.

Q Did you ever recommend the purchase of Asamera Oil?

A No, I didn't.

Q Did you know Mr. Yamada was buying Asamera Oil for Dr. Rolf's account?

A Yes.

Q And that he was buying it for Takara Partners?

A Did he buy that through Eastman Dillon?

Q Yes, sir. Did you know it?

A If he bought it through Eastman Dillon, yes.

Q And he was buying it for Mr. Marusi?

A If he did that, yes, through Eastman Dillon.

Q Did you ever pick up the phone and ask Mr. Yamada why he was buying the stock?

A No, I didn't. He was an investment advisor, a professional and i didn't ask Mr. Yamada.

Q Even though you spoke to Mr. Yamada once a day form May of '69 to October 1970, and you had known Mr. Yamada's opinions, his reputation in the field, you never once said to him, "Mr. Yamada, you are buying X,Y,Z stocks for your account, what's in it, maybe my other accounts would be interested"?

MR. KELLY: I object to the form of the question

THE COURT: Sustained.

Q How about sales of those six stocks that you admit you recommended to Mr. Yamada? Did you recommend the sale of those stocks?

A No, I didn't.

Q Did you make any comment when Mr. Yamada sold them?

A No, I didn't.

Q Did you ever ask Mr. Yamada why he was selling?

A No, I didn't.

Q Did you ever tell Mr. Yamada that Eastman Dillon was or was not recommending the sale?

A Mr. Yamada was aware of --

Q Did you or didn't you, sir?

A No.

Q As a matter of fact, during the period Eastman Dillon did recommend the sale of certain stocks that it had previously recommended purchases of, hadn't they?

A I don't recollect, sir. That is seven years ago.

Mr. Yamada received writeups from our research department on purchase recommendation and if there was a sale recommendation Mr. Yamada's office would have received it also. He was on what is known the institutional mailing list.

Q Did he ask to go on that list?

A I don't remember, sir.

Q You just put him on there. How about accounts that were open in other houses. You knew about them shortly before they were opened, didn't you?

A No, I didn't.

Q Didn't you get confirmations regarding purchases that were made in those accounts?

A Confirmations come to me, the few that did, came after the account was opened and the order was executed. These are advices on the purchase of sale.

Q That was precisely my question, Mr.Stott. You knew about the opening of those accounts shortly after they were opened?

A I thought you said shortly before.

Q I said shortly after.

MR. KELLY: I beg your pardon, that is not correct.

THE COURT: Let's assume the question is "shortl after."

Q You knew about these accounts shortly after they were opened, didn't you?

A Yes.

Q Did you ever ask Mr. Yamada how come he was opening accounts in other houses?

A Mr. Yamada --

Q Did you or didn't you, sir?

A No.

Q Mr. Yamada testified in this courtroom last week, Mr. Stott, that with respect to the new issue underwriting of Visual Sciences he asked you if Eastman

Dillon would join the selling group. Do you recall that?

A I recall the testimony.

Q Do you recall Mr. Yamada saying that to you?

A No, I do not.

Q Mr. Yamada also testified that with respect to the new issue underwriting of GPI Industries he asked if Eastman Dillon would join the selling group.

A I remember the testimony.

Q Did Mr. Yamada make that request of you?

A No, he didn't.

Q With respect to Visual Sciences and GPI after market purchases of those stocks were made by you through Eastman Dillon for Dr.Rolf's account?

A That is correct.

Q During 1969 through 1971, did Eastman Dillon have rules respecting the types of stocks it would permit their customers to trade in?

MR. KELLY: I object, your Honor "trade in." It just doesn't define a fact correctly. The question is, that they would recommend the purchase of. That would be different. Trade in is not a clear term.

MR. TESSLER: I will rephrase it, Mr. Kelly.

Q Between May of 1969 and March of 1971, did Eastman Dillon have rules respecting the types of stocks they would permit their customers to purchase through that firm?

A Yes, they did.

Q Did some of those rules deal with over-the-counter stocks?

A Yes, they did.

Q Did some of those rules deal with the history of the companies involved?

A History in what respect?

Q The longevity.

A Not to my recollection.

Q Did they deal with the price of the stock?

A I believe the figure -- that is going back now -- I believe the figure was -- don't hold me to this -- I believe it was $5.

Q In other words, Eastman Dillon, to your recollection, had a rule that they would not permit their customers to purchase over-the-counter stocks at a prices less than $5 through the firm, is that correct?

A Unless it was unsolicted, yes. I believe unless it was unsolicited. In other words, we could not go out and solicit.

Q Could a customer come to you and through you and Eastman Dillon place a stock at a price of a dollar a share?

A I believe he could, yes.

Q Was it not the firm policy, Mr. Stott, at Eastman Dillon as it was in several of the old brokerage houses, they didn't want their customers trading at particular price stocks on their firms and they would not trade for a stock selling below $2 or $5 per share whether or not unsolicited?

A We executed orders of Food Fair Properties and things of that sort. They were under $5.

Q With respect to the initial underwriting of GPI Industries, would Eastman Dillon have permitted you to make that purchase?

A On the initial underwriting?

Q Yes, sir.

A I don'tbelieve so.

Q With respect to the initial underwriting, shares of Visual Sciences, would Eastman Dillon have permitted you to make that purchase?

A I don't believe so because we weren't the underwriting --

Q Did it not strike you as wrong, Mr.Stott, that Dr. Rolf's account was trading in stocks which if those trades had been made through Eastman Dillon would not have been permitted?

MR. KELLY: I object, your Honor. With respect to securities of new offerings if Eastman Dillon were not in the underwriting group they couldn't make the sale.

THE COURT: Sustained.

You were the branch manager, Mr.Stott, of the Newark office until the fall of 1969.

THE WITNESS: Yes, sir.

THE COURT: When you went to the New York office as a registered rep resentative?

THE WITNESS: Yes, sir.

THE COURT: What would you say you were earning when you left the Newark office, in round figures?

THE WITNESS: $40,000.

THE COURT: Gross?

THE WITNESS: Gross, sir.

THE COURT: Then you were at the main office for, I guess, about a year and a half before you made this first phone call to Dr. Rolf.

At the end of the year back there at the main office, what would you say your gross was? That is before making the call.

THE WITNESS: That would be the calendar year '68.

THE COURT: Yes.

THE WITNESS: Not having my record available, I would say about 75, 70, $75,000.

THE COURT: Gross?

THE WITNESS: Gross, sir.

THE COURT: Thank you.

Q Mr.Stott, this morning Mr.Silverman asked you if when you were a branch manager at those offices in New Jersey, you would have questioned the registered representative who permitted a customer to buy the 15 stocks which had been denominated in this courtroom as lowest of the low?

A Yes.

Q Your answer was it would depend on what the account's objective was and you said further you wouldn't question the purchase of those stocks if you knew what the account was trying to do. Do you recall that?

A Yes.

Q What if you didn't know what the account was trying to do, would you then question the purchase of those stocks?

A I suppose so, yes.

Q Did you question Mr. Yamada in this instance? Yes or no.

MR. KELLY: I object to that question, your Honor. If it is suggested there is any similarity between the customer and an investment advisor.

THE COURT: Read back the question.

(Record read.)

THE COURT: As to what?

MR. TESSLER: As to the purchase of the 15 stocks for Dr.Rolf's account.

THE COURT: I will allow it.

THE WITNESS: Could you repeat just the last question back?

(Question read.)

A No.

Q You testified this morning that in your opinion the obligation upon the broker imposed by the "Know your customer" rule was not imposed upon you, in your opinion, in a case where you were dealing with an investment advisor for that particular customer, is that correct?

A Yes, sir.

Q And in fact you indicated by example to Judge Pierce that if Judge Pierce had an investment advisor it might even be possible that you would not know Judge Pierce, you would just know the investment advisor.

A That is correct.

Q Do you feel that that same rule holds in a case where the investment advisor has been recommended by you?.

A Yes, I do.

Q In a situation where, as you contend, you don't know the investor's objectives?

A That is correct.

Q Or the investment advisor's objectives.

A That is correct.

Q You feel you have no obligation under the "Know your customer" rule that a purchases is appropriate, is that correct?

A That is correct.

Q You also testified this afternoon a few occasions Dr. Rolf called you and told you that he was questioning the quality of some of the stocks purchased by Mr. Yamada. Do you remember that?

A Questioning the quality?

q Yes.

A I don't believe I said that. I believe he said he would call and tell me Mr. Yamada was doing this and that. I don't believe he was questioning the quality.

Q What does "this and that" mean?

A In other words, he would call and say Mr.

Yamada bought such and such -- I forget what the stocks were -- and I would say, "Doctor, I think you should talk to Mr. Yamada concerning this."

Q You also testified this afternoon that Dr. Rolf asked you to get in touch with Mr. Yamada regarding those purchases, do you remember that?

A No, I don't believe I testified Dr. Rolf asked me to get in touch with Mr. Yamada concerning the purchases.

Q If I understood you correctly,sir, is it your testimony that on each and every occasion when Dr. Rolf called to raise questions about the stocks purchased by Mr. Yamada, you told him in each and every instance he should get in touch with Mr. Yamada?

A Number 1 --

Q Yes or no, sir.

A That is not what I said.

Q What did you say?

A I said that Dr. Rolf would call or I would call him to give him his over-the-counter quotes that he had asked me in the letter to do, and he would say, Mr. Yamada i buying this or buying that, and I would say, well, you should call Mr. Yamada concerning this. He is your investment advisor and you have signed the forms making him so.

Q And is it your testimony that Dr. Rolf never asked you to call Mr. Yamada?

A Not to my recollection, sir.

Q And is it further your testimony that each and all of your conversations which took place at least once a day from May 1969 to October 1970, you never on even one occasion asked Mr. Yamada why he was purchasing this or that?

MR. KELLY: I object to this question, your Honor. It has been asked, I would say, 20 times.

THE COURT: Sustained.

MR. TESSLER: I have no further questions, your Honor.

THE COURT: There is a question you were asked already, I believe, but I will just ask it again.

At any time between May of '69 and March of '71, did any of your superiors at Eastman Dillon raise any questions of any kind about Dr. Rolf's account with you?

THE WITNESS: Well, there was the one time, as I explained, when there was a problem with a confirmation coming out of the computer, or a statement.

THE COURT: Other than that error?

THE WITNESS: No, not until approximately a week before there was an article that appeared about Mr.

Yamada in the Wall Street Journal.

THE COURT: Defendants Exhibit Eastman Dillon E, from Mr. Stott to Dr. Rolf, may I have that?

(Handed to the Court.)

THE COURT: Thank you.

Before we give Mr.Stott back to Mr. Kelly, do you have some additional questions, Mr. Silverman?

MR. SILVERMAN: Yes, your Honor. I won't be very long.

FURTHER CROSS-EXAMINATION

BY MR. SILVERMAN:

Q You were asked some questions by Mr. Tessler about Dr.Rolf's portfolio of 1969. I show you Yamada Exhibit A in evidence, and I ask you if you can tell me whether there were any securities in that portfolio that were not listed on either the New York Stock Exchange or the American Stock Exchange.

A Excuse me, is there some place here that that would be noted? I am sorry, yes. With this in front of me I can tell you what stocks were listed on the New York and which on the American.

Q Were there any on the over-the-counter stocks?

A According to this exhibit there were two that were, I guess, traded over the counter.

Q Which two?

A Looks like Loew's Theatre warrants and Leasco Data warrants.

Q And you knew the stock in which they were convertible as listed security, is that right, you know that? Loew's is traded on the New York Stock Exchange and Leasco is traded on the New York Stock Exchange?

A I really didn't know if there were conversion privileges.

Q YOu don't know that a warrant allows you to buy common stock?

A You mean reading this here?

Q Yes.

A I know that, yes.

Q And you knew the common stock was listed on an Exchange of both Loew's and Leaso, isn't that right?

A Yes.

Q So all the stock was either listed on an Exchange or else they were warrants that entitled the holder to buy stock listed on the Exchange, is that right?

A Yes, according to this,yes.

Q According to Yamada Exhibit A. in evidence, how many of the stocks that were listed there paid dividends?

A How many?

Q Yes.

A It looks like 16.

Q Out of how many?

A Out of 23.

Q I am going to show you --

A Excuse me, this doesn't show what the dividends were.

Q Do you know what the dividends were?

A No.

Q Do you know what the return was on any of those stocks?

A You mean what the yield was?

Q The yield, yes.

A Back then, no.

Q But you gave an opinion that this wasn't a portfolio for a dividend-interested investor, is that right?

A That is correct.

Q Not even knowing what the dividend or yield was?

A I would still stand by that.

Q Even though you have no facts you would stand by it?

A Yes, I would stand by it basically.

Q How many of the stocks on Yamada Exhibit A would classify under the category high quality, and would you tell me whether you disagree in any respect with any of the stocks so qualified, and if so, which one?

MR. TESSLER: I will object, your Honor, on the ground, Number 1, the exhibit speaks for itself and Number 2, the designation of the classification "high quality" is a classification that was made by Mr. Whitman, who was qualified as an expert in securities, after spirited voir dire in the courtroom. I don't think Mr. Stott has qualified himself as an expert in this particular area.

THE COURT: He works for an established firm, formerly was branch manager of two firms and now is vice-president in sales. You can inquire a bit on voir dire, if you wish, before I will rule on it, since it is calling for an expert opinion, really.

MR. SILVERMAN: Your Honor, if you please, Mr.Tessler opened the area up by having him grade the portfolio. Now when I want to cross-examine him on the portfolio, he says he is not an expert. If he will strike the testimony --

THE COURT: Maybe you can direct me back to the particular area where he opened it up, I may agree with you.

MR. SILVERMAN: He said in your opinion was that portfolio an aggressive portfolio, one for someone who wanted capital appreciation. He asked him opinions on it and now I want to cross him on his opinion. If he will strike that opinion --

THE COURT: No, no. If you wish to inquire about the stocks in various ways for the purpose of eliciting whether or not they were indeed reflective of an aggressive type of securities, you can do that without necessarily eliciting his opinion as to whether it listed items on Exhibit A in evidence are high quality or low quality or lowest of the low.

My ruling is, you may inquire on what Mr. Tessler elicited in that regard, but I am going to sustain the objection.

BY MR. SILVERMAN:

Q When you consider a stock as being aggressive, are you referring to stocks that are listed on the New York Stock Exchange, that have five-year records of earnin What do you mean when you say a stock is aggressive? What do you mean by that?

A An aggressive stock to me is a stock that might pay a small dividend but take most of their earnings and put it back into the company for capital improvement and things of that sort.

Q Would you say IBM is an aggressive stock?

A I would say it is very aggressive management.

Q And Xerox?

A Very aggressive.

Q Polaroid very aggressive?

A Wait a minute now --

Q Would you expect to find --

MR. KELLY: Let him finish the answer.

THE COURT: Yes.

A If you took Xerox from the time it was Haloid Company --

Q I mean Xerox in 1969, was it plowing back its earnings into its operations?

A I would call that a very good growth stock.

Q You would say that is an aggressive stock, is that right? That is what you mean by aggressive?

A No, I don't. That would be a growth stock.

Q Do you mean aggressive, when you say a stock is aggressive do you mean it is a growth stock?

A A form of a growth stock, yes.

Q IBM, you would say that is aggressive?

A No, I wouldn't. I would say that is growth.

Q Would you say that Anaconda is aggressive or growth?

A Back then or now?

Q 4/30/69.

A I would say that was a growth company.

Q Would you say C & A Financials is a growth company, aggressive company, stable company?

A I am not that familiar with that.

Q How about Cities Service?

A I would say that that was an aggressive growth company, yes.

Q Tell me again, what is the difference between an aggressive company and a growth company, if there is any, in your opinion, the way you used the word. I want to know the way you used the word "aggressive" and the word "growth."

A A growth company is a company that has ten or so years of basically continual pattern of earnings growth, being up most every year. An aggressive company can have an earnings growth of so much one year, so much the next year and then maybe a little bit off, more of a swing in the patterns of their earnings.

Q Was Mr.Sterling the dean of investment research at Eastman Dillon?

A The dean?

Q Was he held in very high regard at Eastman Dillon?

A Yes, sir.

Q Did he favor aggressive stocks?

THE COURT: YOu mean at the time?

MR. SILVERMAN: In 1969.

MR. TESSLER: Your Honor, I think that calls for hearsay.

THE COURT: Now we have testimony he gave these flashes and went in all the offices over the loud speaker, and Mr.Stott would hear them along with others. There is a foundation for that to be asked.

A Yes, he recommended aggressive stock.

Q Eastman Dillon was regarded as a conservative firm onWall Street, is that right?

A What do youmean, in what --

Q In its investment approach at that time.

A I guess it would be.

Q And Mr. Sterling was held in high regard at Eastman Dillon?

A Yes, sir.

Q Now look at the portfolio as it existed on December 30, 1970, and I am going to show you Defendants' Exhibit D. in evidence, and that is the monthly statement for the year ended December 31, 1970. Would you tell me first whether there is any company on that list which is listed on the New York or American Stock Exchange?

A I believe there are two.

Q Which two?

A I believe Simplex Wiring & Cable and I believe Benguet Consolidated.

Q There are two out of how many?

A Seven.

Q Is that all there were in the account?

A I am sorry, nine.

Q So there were two stocks out of nine --

A This is the security position, sir (indicating).

Q Delanair was not listed?

A Right.

Q How would you rank Delanair? An aggressive --

A I never knew anything about Delanair.

Q What is the next stock?

A That is just a continuation of that, sir.

Q GPI Enterprises Incorporated. How would you rate that, aggressive, growth?

A I never knew anything about it.

Q Hair Extension Centers, is that like Anaconda?

A Sir, I don't have any information on these companies to give you an opinion on them.

Q Holobeam --

A Sir, it would have to apply to all these.

Q International Health --

A On all of these (indicating).

Q You told us the Sterling portfolio as of 4/30/69 was aggressive. What adjective would you use to describe the portfolio as of December 31, 1970?

MR. KELLY: Objection, your Honor. The witness has testified he doesn't know the securities and therefore it would be unreasonable to ask he rate them.

THE COURT: He can tell us that. Go ahead.

A I don't know the securities.

Q You didn't know the securities at 4/30/69, but you rated them for Mr. Tessler. I want you to do the same thing for me for December 31, 1970.

MR. KELLY: I object to that question.

THE COURT: Sustained.

MR. SILVERMAN: May I inquire into the basis of your Honor's ruling so I can know how to rephrase my questio Judge?

THE COURT: Mr. Silverman, rightly or wrongly th ruling is based on the role of Mr. Tessler in this suit as against your own, and matter of burdens.

MR. SILVERMAN: Your Honor is thinking in terms of the cross claims.

THE COURT: I can understand you want to come behind Mr. Tessler and cross-examine in some areas he may have gone into, but essentially now your roles are quite different. Mr.Tessler's is different from Mr. Kelly's as well, of course. If you want to make an offer, it may be your right.

MR. SILVERMAN: I do not, your Honor. I think it is clear from an examination of December 31, 1970 statements what those stocks were.

I have nothing further on that.

MR. KELLY: I will not be long, your Honor, a handful of questions. I would like, your Honor, to read from the deposition of Mr. Stott. I read it here only b ecause I believe it is fair to fill in the reading, having to do with the conversation initially with Dr. Rolf. I would read from page 16, line 7 to line 19.

"Q Did you discuss with Dr. Rolf prior to making the recommendation what his investment objectives were?

"A No. Dr. Rolf had -- well, to go back on the thing, Dr. Rolf had been dealing with Blyth Eastman Dillon. The account was assigned to me in either April or May of 1969. So I called Dr. Rolf in Cleveland, introduced myself and he said, you know, he asked me some questions, how long have you been in the business, and at that time it would have been 12 years, and he wanted to kn ow if I was a partner and I said no, and why. 'I am used to dealing with partners, and I am going to look into some of the investment advisors.'"

MR. SILVERMAN: I think there is a typographical

MR. KELLY: I would agree with that. I will read it.

"He said, y ou know, he asked me some questions 'how long have you been in business,' and at that time it would have been 12 years, and he wanted to know if I was a partner and I said no, and why, and he said, 'I am used to dealing with partners,' and things like that and 'I am going to look into some investment advisors.'"

I agree with your interpretation, Mr. Silverman.

MR. SILVERMAN: Would you read to the end of the answer?

MR. KELLY: Yes. There is a final paragraph:

"And do you know any' -- and that is when I gave him Mr. Yamada's name and the other fellow's name, Mr. Donald Geddes."

REDIRECT EXAMINATION

BY MR. KELLY:

Q You said the account of Dr.Rolf was assigned to youby Mr.Schlesinger?

A It was assigned to me by Mr. Schlesinger.

Q Was Mr. Schlesinger a partner?

A Yes.

xxx (Defendant Eastman Dillon Exhibit GGG was marked for identification.)

Q Would you tell me what those documents are?

A These documents are instructions.

Q Are those instructions to receive securities int the account with or without payment?

A Yes.

Q And is it through this instruction that you woul initially become aware of the fact that a security had been acquired by Dr. Rolf elsewhere than with his account at Eastman Dillon?

A That's correct.

MR. KELLY: I offer this in evidence, your Honor.

MR. SILVERMAN: No objection.

THE COURT: Received.

xxx (Defendant Eastman Dillon Exhibit GGG was received in evidence.)

MR. KELLY: No further questions, your Honor.

THE COURT: Anything further of this witness?

Let me ask you, do we have in evidence any written document reflecting the discretionary account agreement between Dr. Rolf and Eastman Dillon which came into existence during the time Mr. Sterling handled the account?

MR. KELLY: It has been marked, your Honor. It has not been offered.

THE COURT: What is the marking, if you know? Is there one such agreement?

MR. KELLY: Yes, sir.

THE COURT: Or is there more than one sugh agreement?

MR. KELLY: There is one such document.

THE COURT: May I see that?

MR. KELLY: Yes, sir. This is Defendants' Exhibit P your Honor, and I will offer it in evidence.

MR. SILVERMAN: No objection.

xxx (Defendant Eastman Dillon Exhibit P was received in evidence.)

MR. TESSLER: I assume,your Honor, it is not offered in any way with respect to the cross claims asserted against defendant Yamada.

MR. KELLY: No.

THE COURT: We will make that then not against Yamada.

Step down, Mr. Stott.

(Witness excused.)

THE COURT: What did you wish Mr. Kelly?

MR. KELLY: I have a witness, your Honor. Mr. Cione.

THE COURT: I think the record should indicate as far as I recall all witnesses who have testified have bee in the courtroom during the testimony of all other witnesses prior to each witness testifying, with the exception of Mr. Yamada.

MR. KELLY: I would say Mr. Cione has not been here throughout the entire testimony.

THE COURT: Yes, perhaps most of the time.

MR. KELLY: I would think so.

JOHN P. CIONE, called as a witness by the defense, being first duly sworn, was examined and tes fied as follows:

DIRECT EXAMINATION

BY MR. KELLY:

Q Mr. Cione, what is your present employment?

A I am first vice-president, legal and compliance director at Blyth Eastman Dillon.

Q Would you describe your educational background?

A I went to high school at St. Francis Prep, and from there St. Francis College in Brooklyn, and from there I went into the service, United States Marine Corps, and after a little more than two years there, I went to law school at St.John's University at night, and I graduated St. John's, graduated St.Francis. That is my formal education through law school.

Q What did you do after you left law school? You passed the bar examination?

A I passed the bar examination in New York. I am an attorney qualified to practice in New York. I worked during law school as a law student at Dewey, Ballanti from 1957, until April 1972. I was a law clerk and investigator and I handled chores in the managing clerk's office in what they call the corporate form file, and I did blue sky registration work at the law firm, and in April 1962, I joined the United States Securities and Exchange Commission, the New York regional office, as an enforcement trial attorney, and from 1962 until 1965, I investigated and recommended and tried cases for the Securities and Exchange Commission which included injunctive actions in this Federal Court, and other Federal Courts throughout the country, and I tried administrative proceedings before the Commission and I participated in criminal reference investigation with the U. S. Attorney's office as well as local county prosecutors.

I believe that was my function at the Commission during the course of the investigations which included net capital investigations.

There were stock manipulation, unregistered stock sales; there were general conduct as it related to the operation of broker-dealers, their salesmen, many times, of customer or investment advisors.

Those areas not only covers their conduct, but the registrations of these people.

Q Are you a member of the Securities Industry Association?

A I am currently on the executive committee of the Securities Industry Association, and in the past I have been the president for two years, and prior to that I was treasurer and recording secretary at which time that industry association, which is a group of compliance directors on the street,but when I first joined that group there were approximately 25 security compliance people, lega and compliance people, and as the recording secretary and treasurer, and being in charge of mem-erships, I enlarged that group from 25 to approximately 250 people, having come from the Commission and seeing the need for firms really to spread the word amongst each other rather than just to meet in small groups.

This became a premise amongst the security industry association legal and compliance division.

We then began to formulate and express the word as it related to new procedures and compliance and what our function should be as representatives of member firms in the industry.

Q Have you lectured on the subject of compliance with regulatory agency rules?

A I have lectured for the American Bar Association, American Law Institute, as an industry representative in seminars before attorneys. I am on the staff of the Institute of Finance which is an industry institution to teach people who are in the securities business and people who want to come into the securities business subject. I am a moderator at the Ron Lewis seminar, which is a professional seminar which has approximately 120 members.

I have appeared on behalf of the United States Attorney's office as an expert witness on manipulation cases, a manipulation case..

I have appeared for the Securities and Exchange Commission on anti-fraud-type problems; I have appeared in civil actions on behalf of individual plaintiffs or brokerage firms, depending on the facts in the case as an expert witness in the compliance area.

Q When did you commence employment at Eastman

Dillon?

A August 1965.

Q And in the period of time from that time to this time, will you tell me what was the work that you did and what offices you held?

A Well, in August 1965 I joined the firm as legal and compliance director. The firm at that time was a partnership. I had that position with the firm in 1970 when I became a general partner and in 1971 Eastman Dillon incorporated and I became first vice-president in the corporation.

In 1972 the firm merged with Blyth, and I becam a first vice-president, always maintaining the responsibilit of legal and compliance director in the corporate official title, and category, and I continue in that position today.

My function at the firm as legal and compliance director are to oversee the firm's activities as they relate to complying with the Federal Security laws, State security laws, various Stock Exchanges, self-regulatory bodi and the firm's policies and in performing that function I have developed a department and a staff that has a group of investigators and clerical people that survey the firm's activities as they relate to the customers and salesmen in overseeing the branch managers and the other people who are in supervisory capacities as to whether or not they are overseeing their supervisory functions.

Q How many people do you have in your department?

A Currently 18 people in my department.

Q Will you describe generally the size and locatio of Blyth EAstman Dillon?

A Today?

Q In 1969, 1970.

A In 1969 we had approximately 25 branches and 400 salesmen. Those branch offices were located, in, I would say, most of the major cities in the United States and we were in San Juan and Paris, I believe.

Q Can you tell me in a broad way the activities or business of the firm by classification?

A Yes. The firm's activities generally were the underwriting and that underwriting included municipal bond underwriting as well as corporate underwriting. The corporate underwiting included equity stocks, as well as corporate bonds, with no equity features to them. It included the research department that dealt with institutional and retail clients.

It had a retail sales force which includes the sales personnel that were in the branches. We had an over-the-counter trading department which dealt in agency transactions on behalf of the salesmen for clients as well as being a marketmaker in a number of securities that the firm had an interest in for one reason or another, and those people in the marketmaking area traded stocks in the firm inventory as well as providing stock for clients that wanted to buy or sell stock or for the general professional dealer market that wanted to buy or sell stocks.

Q When you say marketmaking in the context in whic you just defined it, am I not correct in saying that would be the over-the-counter securities which you sold through that method?

A That's correct.

Q With respect to listed securities, it is a different method in the sense that you go to the auction mar of the Exchange?

A Exactly. In 1969 that was mandatory. All listed stock had to be executed on the floor of the various Stock Exchanges that you were a member. The firm is a member on all national stock exchanges. They had in 1969 three or four seats on the floor of the New York Stock Exchange. We had a block trading department which traded not only over-the-counter blocks, but listed blocks as well. We have a syndicate department and the syndicate department had to do with the arranging of underwriting of sell groups, stock we decided to underwrite or decided to become selling groups participants in if the firm was being underwritten by other companies.

We have a huge operational area that not only did the operations for our firm, but at one time did the operations and clearing for a number of other firms.

Q When you talk about clearance, do you mean with respect to the back office functions that every firm has in some instances you perform that function for other firms that didn't have their own facilities?

A For other retain firms as well as specialist firms.

MR. KELLY: Your Honor, I ask the Court qualify the witness as an expert, as to practices and procedures in the industry, and (2), as to requirements of regulatory bodies governing of the industry.

MR. SILVERMAN: Your Honor, Mr. Cione cannot be qualified as an expert in this case although I would conced his qualification in a case involving a firm other than Blyth Eastman Dillon. He is an officer of Blyth Eastman Dillon, a first vice-president. He can't give expert opinion on behalf of a party when he himself is an officer of the party. He has to be independent.

MR. KELLY: It is a rule, your Honor, with which I am not familiar. I have had any number of cases where the parties speak with respect to knowledge on an expert basis, whether they be engineers or lawyers or doctors or investment bankers.

THE COURT: I would not think that merely becaus he is really in a position of being a significant officer of a party that he can't be qualified to testify as an expert. The objection that you raise, Mr. Silverman, it seems to me goes to aspects relating to motive, bias, prejudice and weight. I am unaware that it is an out and c bar to qualification as an expert even though a party,

It may be it isn't something that we see happening that often. It is like having a medical malpractice suit in which the doctor is asked to state his opinion as to whether he performs surgery properly and well. I don't know that he couldn't state it.

MR. SILVERMAN: I msut say this is the first time I have come across a situation where an expert is an officer of the defendant party calling upon his testimony. May I reserve my right to brief the point in a post-trial brief, and if the cases support my position his opinion evidence would be stricken.

THE COURT: I would rather get it before we get post-trial briefs. How many more witnesses are there?

MR. KELLY: No more, your Honor.

THE COURT: Perhaps tomorrow morning when we resume you can tell me what you have found. It would be better, I think, if we can rule on it before the trial concludes. See what you come up with. We will reserve on it to that extent.

MR. SILVERMAN: Am I to understand the witness is being called solely as an expert and solely to give opinion evidence on those matters? If there are other areas, that can be covered now while we still have time.

MR. KELLY: He will testify to certain conversations with Yamada and with Dr. Rolf. I would prefer to put the question in the order in which I prefer to put them.

MR. SILVERMAN: He is going to be both an expert and fact witness?

THE COURT: I gather.

MR. SILVERMAN: We will do our briefs tonight and advise you in the morning, your Honor.

MR. TESSLER: Your Honor, unless I misunderstood I think the request is unduly broad. I can't believe

Mr. Kelly is asking to qualify him in each and every practice in the industry and that is what it sounded like from this end of the table.

THE COURT: As near as I got it written down here, Mr. Kelly asks to have Mr. Cione qualified with respect to the practices and procedures in the industry and then I think he said and the performance of regulatory bodies governing the industry.

MR. KELLY: The requirements of regulatory bodie governing the industry.

THE COURT: I think you can assume reasonably, Mr. Tessler, that at this time we all know what kind of issues have emerged during trial and insofar as Mr. Kelly is asking to have Mr. Cione qualified in these two respects, he is seeking to have him qualified to testify as an expert with respect to the kind of matters we are concerned here with, the kind of issues which have been raised thus far. If you have some concern that the witness might not be qualified in some particular way with regard to the kind of issues which have arisen here you can inquire on the voir dire.

MR. TESSLER: Your Honor, if what Mr. Kelly intends to question this witness about compliance practices and procedures in the securities industry, and the Federal rules and State regulations regarding those areas, I would have no objection. Unfortunately, I can't determine from the quest exactly where the qualification is sought.

THE COURT: Why don't you make an offer of proof, Mr. Kelly, and inform both your opponents where you are headed. They will know better what they have to do one way or the other.

MR. KELLY: I intend, your Honor, to elicit from this witness the instances in which third parties are acting for the account of their customers who are customers of the brokerage firm as well, and how frequently that kind of third party relationship exists throughout the securitie: industry.

THE COURT: You mean more particularly investment advisors?

MR. KELLY: I mean in addition to investment advisors, retirement plans, pension trusts and other instances. I intend further to inquire of him the amount of which trading authorization of investment advisors the firm has.

I intend to ask him what was done in respect of the determinations within the firm of suitability with respect to customers and how that is done and in what instances and to what extent that is done, where there is an investment advisor. I propose to ask him what is the function of an investment advisor and how he is compensated.

I intend to inquire of him with respect to such terms as delivery against payment and how it works.

I intend to ask him with respect to rules of the firm as to the solicitation of securities.

I intend to ask him the policies of the firm as to trading authorizations during the period of time in question, and the policies and practices of the firm regarding participation as an underwriter. I intend to ask him if he has ever heard the term "box" as applied to manipulation.

I intend to ask him in the area of compliance procedures, the method and manner of detecting and identifying churning, and what procedures he uses, and --

THE COURT: Except for that last one in particular, it sounds like they are pretty much all fact questions.

MR. KELLY: I would say they basically are, your Honor, as to the areas that I have indicated to you. I would say with respect to churning, that would be in the nature of expertise.

THE COURT: By the time we get to this we will hear from Mr.Silverman beforehand.

MR. KELLY: I intend to ask him if he ever met Dr. Rolf and Mr. Yamada and what was said and done.

THE COURT: Let's proceed until 5:30.

BY MR. KELLY:

Q Mr.Cione, will you describe those instances in which the authority to trade in the account of a named customer of your firm or any brokerage firm is vested in a third party?

MR. TESSLER: Your Honor, I must rise because I think your Honor has specifically pointed out the question Mr. Kelly was going to ask were largely factual questions, and in certain areas I heard nothing that Mr. Cione is an expert. I have no quarrel with a question what are the policies of Blyth Eastman Dillon with respect to authorization of third parties. I thought it went to many other firms.

MR. KELLY: It does, although I am perfectly willing to limit the question to Eastman Dillon, but everybody does it.

THE COURT: Why don't you limit it.

Q Do you have the question, Mr. Cione, or should I restate it?

A I have the question.

Q Let me restate it.

Describe those instances in which the authority to trade in the account of a named customer of the firm of Blyth Eastman Dillon is vested in a third party so far as that situation existed in the year 1969, and 1970.

A Eastman Dillon in 1969 were a firm that had a product mix, a sales product mix of approximately 65 to 70 per cent considered institutional-type business, and 30 per cent considered retail-type business. That institutional business had, as part of its makeup, you have accounts like pension funds, retirement funds, executors of wills, partnerships; there are mutual funds, there are insurance companies, there are trust departments of ban and there are general trustees of trusts, there are corporations that have individuals and are hired within the corporation to do the investing for the corporation.

These are all instances where you have a third party who is a professional money manager vested with the responsibility of making decisions for the entities that I just explained.

In addition you have the people within those -- in addition to the people within those entities, you have investment advisors that may be hired to act for each of the entities, so you have an overlay in that regard of the professional money manager within the corporation, with the pension plan, within the trust and then you may have the investment advisor as well.

Q So that in those instances the account may be in the name of A,. an organization, corporation, and the direction with respect to trading is done by B?

A Yes.

Q Just as it it so in the case of an investment advisor?

A Yes.

Q In 1969, 1970, in how many accounts of your firm was trading authorizations vested in an investment advisor?

A Well, the majority of our business was done by what you might call a third party money manager, whether he be an investment advisor or a money manager, or someone paid to make investment decisions, someone paid other than our representatives.

Q Could you estimate in terms of pure investment advisors, known by the firm to be investment advisors, how many you had in the firm in 1969, 1970?

A We had approximately 175 to 200 investment advisors, money manager investment advisors.

Q Leaving aside for the moment --

MR. SILVERMAN: Excuse me, I am sorry. May I have that question read back? I have missed it.

(Record read.)

MR. SILVERMAN: I am confused, your Honor. Does he mean employed by the firm?

THE WITNESS: NO, sir.

THE COURT: What is your question again; does he mean employed?

MR. SILVERMAN: By the firm or outside the firm.

THE WITNESS: Outside the firm. I mean outside the firm that were not employees of the firm. People in the category of a Mr. Yamada or people in the category of those people I described having worked for the entities described earlier; those people who are not employed by the firm as registered representatives, partners or in any capacity. They were clearly third parties outsid the firm.

Q Departing, though I will come back to it, from the situation alone of an investment advisor or other third party, I would like to know across the board, in 1969 and 1970, will you tell me what, in connection with the surveillance of security transactions, from the point of view of suitability or the customers' accounts of the firm of Eastman Dillon, would you tell me what was done by the compliance department to supervise that activity?

A Yes, sir. Bear with me, if my answer gets a little lengthy.

I would like the time to go from one area to another area.

THE COURT: Let me interrupt a moment to say this. There can arise here a question of how much of the description of this type would be relevant because our particular concern is what happened here.

MR. KELLY: Could I say this, your Honor. Though I may not be confronting your question directly, I propose following this to say with respect to an investment advisor, what is done to try and demonstrate the difference between the two and the capacity for a firm such as Eastman Dillon, to determine suitability in the different contexts in which that obligation arises.

THE COURT: Let's see where it goes.

A The firm reviews --

MR. KELLY: I may say, your Honor, with respect to what happened in the operations of the firm, that I will in due course ask the question in those operations, was Dr.Rolf's account unearthed. All of that is what I propose to try to do to explain to your Honor what a brokerage firm does, what it can do, what it tries to do in this area, and what its capabilities are and wherein its capabilities are not present. That is the objective I have in presenting these questions.

MR. TESSLER: I would object, your Honor, precisely on the ground of relevancy. I think that is an issue to determine if that was done here was an issue to satisfy whatever requirements the law requires to determine suitability or an individual account.

MR. KELLY: That is why I want you to know what we didn't want.

THE COURT: I would prefer that you direct your attention to the particulars of what happened here, what did happen or didn't happen.

MR. KELLY: It seems to me, your Honor, I can do that only in indicating what our system is and what we did, and what we didn't do and why we didn't do it in connection with the question of the determination of suitability. The question is one that can't be dealt with in isolation. It has to be taken into account in terms of the entire operations of a brokerage firm.

THE COURT: Why don't we interrupt here. Why don't you take time overnight, Mr. Kelly, to approach it in the narrower fashion because I think Mr.Tessler is right. If you ask these questions and then having gotten the answers you anticipate, is that what is done customarily in the industry, that is another way of doing what you propose to do in an opposite fashion.

MR. KELLY: Your Honor, could you explain to me just a little bit more. I really don't intend to ask him the question does everybody else do that. I am just going to ask, what do we do and what did we do at that time.

THE COURT: The difficult, Mr. Kelly, in part is that here you have an unusual situation to begin with, because you have Mr.Sterling for a number of years, supervising, if you will, an account which is a discretionary account, that being not the customary arrangement in that very firm. Right off the bat we have a situation that is different in at least that rather important respect.

I have asked for a copy of that discretionary agreement and you have been good enough to move it into evidence so I can have that before me.

In my own thought that is a pivotal document in itself.

Why don't you overnight think about approaching it in this other fashion, taking it from the point of view from this particular account and if it turns out that is the way they generally did things like that there, you can bring all that out.

Then, if you wish to discuss with the witness whether that was the general way to proceed to do that, you can have that.

We will resume in the morning at 10:00 o'clock.

(Adjourned to July 13, 1976, at 10:00 A.M.)

David E. Rolf

vs. 73 Cr. 2967

Blyth Eastman Dillon Co., Inc.,
Akiyoshi Yamada & MichaelStott

New York, New York.
July 13, 1976 - 10:00 A.M.

(Trial resumed.)

JOHN P. CIONE resumed.

DIRECT EXAMINATION (continued)

BY MR. KELLY:

Q Mr. Cione, when I was examining you yesterday afternoon, with reference to the numbers 175 to 200, in connection with investment advisors, money managers, would you tell me what the 175 to 200 constitutes?

A My understanding fhe question and my answer was the 157 to 200 constituted the amount of investment advisors the firm does business with.

In addition, I think I may have either misunderstood, but I thought I had a gap, and I didn't complete have clear in my mind whether I answered that question fully, and in speaking to you after the trial, I realized that my answer was incomplete.

The firm deals with professional money managers in addition to those 175 to 200 investment advisors, money managers that act on behalf of banks or corporations or pension plans, retirement plans, and I would say we have a thousand to 1200 people like that, that we deal with, in addition to the approximately 200 investment advisors.

Q And that entire group of the money managers and investment advisors, are people who are acting for others and for the customers, enter the orders on behalf of their principal?

A Yes, sir.

Q In 1969, 1970, was there a compliance department procedure and system devised for the purpose of determining whether a security purchased in the account of a customer of the firm was suitable for that customer?

A There was.

Q Did that system and procedurein operation identify any security in the Rolf account as unsuitable?

A It didn't.

Q What were the rules of the firm regarding securities which are subject to restriction so far as it concerns registered representatives soliciting or recommending?

A The firm has a rule that states that if a stock is rated B-Plus or above, by Standard & Poors, Moody's, Best, or Walker's -- these are four known financial services that do ratings -- that stock may be purchased for customers' accounts without getting a separate research approval.

In addition, if the research department recommends a stock and hasin writing recommendation, that stock may be purchased on a solicited basis for accounts, and in the event there is an issue that a salesman wants to purchase and it is not in the other two categories, he must get a written approval from the research department prior to soliciting orders in that stock, and that is the parameter of our solicitations.

Any other stock would be restricted from being purchased for the account on a solicited basis

Q Are there dollar limits?

A We have a dollar limit on stocks that fluctuate on market conditions. For instance, when I first joined the firm in 1965 the dollar limit was ten dollars a share. In 1969, I believe the dollar limit was $5 a share.

Q With respect to the --

A And that has fluctuated from 2 to 10 in the twelve years that I have been with the firm, 2 to 10, back and forth, depending on market conditions.

Q And the rules to which you refer were rules in effect, and operational in 1969 and 1970?

A Yes, sir.

Q Are there cases in which securities which may not be recommended to a customer may in fact be purchased for a customer by the registered representative?

A Yes,sir.

Q Would you explain the instances in which that is so?

A Well, where the salesman, the registered rep gets an unsolicited order from a client he, in most instances, will buy that stock for the client. There might be an instance where he may not be able to buy that stock. We have a list of securities that is a no-buy, no-sell list, that I have created since I was at the Commission in 1962. I began to compile a list of stocks that had problems with regulatory bodies, and those stocks are distributed to the branches and they can't buy or sell those stocks in anyone's account unless I approve the buy or the sell.

In addition to that, we have situations where professional money managers come in, and this is the bulk of our business, where the professional money manager who has his own contacts and generally he may be getting research from 30, 40 or 50 different firms that he has accounts with --

Q What kind of firms?

A Brokerage firms, investment advisory firms, digests.

MR. SILVERMAN: I object to that, your Honor. He does not have personal knowledge how many firms an investment manager has, that somebody else is getting information from.

THE COURT: He is speaking generally. I will take it.

A (continuing) These investment advisors and portfolio money managers subscribe to services. They have their own expertise, they use the services of many advisory services and they filter through that which is being purchased by them or suggested to them and they place orders with the brokers that they either get the best executions from or they deem to give the best operational service or whatever reasons they may want to give the orders to brokerage firms, and we don't get in between that professional money manager and his client because we don't know what their relationship is, as to what they have discussed concerning investment objectives, balancing an account or why he likes a particular stock or why he may not like a particular stock.

Q What is the basis for your knowledge with respect to the amount of accounts that may be maintained in brokerage firms by investment advisors?

A In 1969, I did a study for the firm of hedge fund managers who apparently were trying to dominate the new issue market as it related to the offerings that we were involved with. I compiled a list of 50 of the largest hedge fund managers around, and they had between 40 and 60 accounts of brokerage firms, each of those top hedge fund managers.

In 1963, when the secondary market was having a lot of problems not germane to this case, but I did another study for the Securities Industry Association and again it was determined the minimum amount of accounts they have is 40 and some of them have 60, 70 accounts for the purpose of doing their investment thing, and this is a study I did for the SIA to make recommendation to the SEC for certain proposed legislation which is still in a proposed state.

Q Will you explain in the conduct of a customer's brokerage account what "DVP" means, how it works, and why it is done?

A DVP means delivery versus payment. It is a common practice where the client that is doing business with a number of institutions may keep all of his assets in one place or in two or three places, or in five. He may keep them in a bank or a brokerage firm. What he does is issue instructions to the brokerage firm that he is doing business with, that particular item of business, he is issuing instructions to them to deliver to his custodian area or whichever brokerage firm he may then have a credit balance or the firm that he may designate as wanting to be the custodian for those securities that he purchased.

They are then delivered to that firm and the firm they are delivered to will pay on the instructions, if there is money there available to pay for the securities.

The money must be free from any independent sale. In other words, you could not buy -- if I were to go to you and say I want to buy a thousand shares of X, Y, Z, some money managers in an attempt to circumvent Reg. T. may sell that thousand shares of X, Y, Z through my firm prior or at the same time they are buying through your firm, and then I would not be allowed to deliver the sales proceeds of that money to you in exchange for the certificates that are delivered because that would be an illegal extension of credit. What we have to give is a letter of free credit when we received in securities from a firm that is delivering against payment.

THE COURT: Do you plan to narrow this, Mr. Kelly?

MR. KELLY: Yes.

Q What is the nature of a delivery free?

A A delivery free is where you buy the stock somewhere else and that stock is paid for at that firm and it is delivered then to the custodian bank or the custodian of your account, wherever you want it delivered. You must issue instructions in writing to received in those securities. That is the general procedure in our firm, that we will not receive securities into an account unless there is an instruction or some kind of an advice, a confirmation or a comparison, broker's comparison which says that we are delivering for account number such and such securities.

They just don't take securities in unless there is some kind of an advice.

Q When the security is taken in free, there is no payment to the delivering brokerage firm?

A I am sorry, would you repeat that?

Q Where securities are delivered free into Eastman Dillon, then there is no payment to the brokerage firm making the delivery, is that correct?

A That's right, those securities could come from another brokerage house. They could come from a safe deposit vault, they could come from home, and when they are delivered in free, they have been fully paid for somewhere else.

Q During the years 1969 and 1970, did your firm have a policy regarding acting for a customer under a trading authorization which vested in your offices or employees discretionary power to buy or sell for that customer?

A We did.

Q What was that role?

A When I joined the firm in 1965, there were approximately 25 or 30 --

MR. TESSLER: Your Honor, I don't mean to cut the witness off.

THE COURT: Sustained.

A (continuing) The rule is that no discretionary accounts could be opened unless I approve them and I didn't approve a discretionary account in the 12 years I have been with the firm, that is, where the employee was handling the account.

The only exception to that rule was where salesmen had discretion in his wife's account or where a client would be on vacation for a short period of time, no longer than a month and then I would personally monitor the trades in that account while he was on vacation.

MR. TESSLER: Your Honor, I respectfully ask all that answer be stricken after Mr. Cione said "no discretionary accounts can be opened u nless" --

THE COURT: Yes, stricken.

Q What was the rule concerning outside discretionary authority?

A There were approximately 20 accounts --

THE COURT: Mr. Kelly, when we ended here yesterday, I sought to suggest the course I would like you to follow. You are not following that course. I am concerned here, on the particular question, was there not Mr. Cione, at Eastman Dillon in 1969 and the years preceding a discretionary account for the plaintiff Dr. Rolf, which was under the supervision or handling of Mr.Stott?

THE WITNESS: There was.

THE COURT: I don't care about the other 19 or what the policy was. Nobody is saying there is anything illegal about that.

MR. KELLY: What I would like to offer to prove, your Honor, is that with respect to the firm's policy, there was put into effect prior to 1979, a prohibition with respect to the maintenance of --

THE COURT: He said it, discretionary accounts. The policy was no discretionary accounts without this witness' approval except for a few exceptional instances, and Sterling's account was there.

What happens next?

MR. KELLY: With respect to this account outstanding, your Honor, for accounts outstanding at the time the rule was adopted, the rule didn't apply since they were outstanding authorities.

THE COURT: Unchallenged by these lawyers.

MR. KELLY: I have no problem with that, your Honor.

May I say, I have tried with respect to your ruling, I thought it applied with respect to the detection of suitability and I tried to reformulate my questions in the manner I thought your Honor meant. I didn't feel that that direction applied to this and if I have misunderstood I apologize.

THE COURT: Go right ahead, sir.

Q During the years 1969 and 1970, did your firm have a policy and practice regarding participation as underwriter or selling group matter in Reg. A. offerings?

A We did.

Q What was that rule?

A We didn't allow them.

Q What was the reason for that prohibition?

A Reg. A. generally has too thing an amount of stock --

THE COURT: Doesn't it suffice that they didn't allow it, whatever the reason?

Q Mr. Cione, have you ever heard the term "box" as applied to a manipulation?

A Not until I heard it in this courtroom.

Q On Eastman confirmations and monthly statements, does there appear a number designating the registered representative assigned to the account?

A Yes.

Q What was the number for Mr.Sterling, for Mr. Stott and for Mr. Heely?

A I have those numbers. Mr.Stott's number was 12-13-6. Mr.Sterling's was 008-9338. Mr. Heely's was 12-0636.

Q In your surveillance and compliance procedures in effect in 1969 and 1970, did you have methods and standards to detect and identify churning?

A We did.

Q Will you state what the procedures and standards were that were used?

A For one thing, every day, every trade is reviewed by at least one person in the department. In addition to that, we have a computer run which comes out monthly and shows accounts that have -- and shows accounts that had a certain number of trades and a certain amount of commission. Those accounts then were put on -- well, an inquiry was then made about those accounts to determine whether in fact there is a certain amount of trade. If the account is traded a certain amount, then further inquiry is made as to why that account is traded. What we do is, we will go through the accounts in the compliance department and determine whether further inquiry has to be made of the branch manager or the salesman.

We determine whether or not the account is handled by a professional money manager. If it is, it falls out of certain categories and it may not receive -- it will not receive the surveillance that an account where we are doing the solicitation and the handling of the orders in addition to the solicitation, where we are the advisor on the account, and there is not some third party in between.

Q Did you use any particular turnover ratio or rate in the operation of the surveillance system?

A We do.

Q What and why?

A An account is not suspect until it gets to be tween three and a half and four times turnover a year. The reason we use three and a half to four times, that is a little more conservative than used in the Looper case which has a Looper formula. That is an SEC case the industry uses pretty much as a guideline in determining churning. In that case they use a six times turnover annually.

Q Did the Rolf account arise in the course of this surveillance as respects excessive trading?

A Never.

THE COURT: During what period?

MR. KELLY: 1969 to 1971.

A Never.

Q Can you explain the reason why this is so?

THE COURT: Was it reviewed, first of all?

THE WITNESS: The account would have come out by computer if it fell within the parameters of the computer surveillance. If it had more than ten trades a month or issued more than $250 in commission business, it would have kicked out, and from what I reviewed of the monthly statements, superficially, it would have kicked out on a monthly basis from time to time, and in the review of that account we would have seen that -- we would have gone to the new account file and would have determined that the account was handled by an investment advisor and we would have looked and seen -- we may have made inquir as to whether or not the transactions were solicited or unsolicited but most likely once seeing it was handled by a money manager, the investigator wouldn't go into further survey of the account unless there was something else that pointed him to making further inquiry.

This account was never brought to my attention. All problem accounts are then brought to my attention, but they fall under these guidelines.

In '69 and '70 my review of our files do not show the Rolf account ever being queried.

Q Commencing in 1967, was there any change in the public offering of the securities of companies whose shares were for the first time being offered to the public?

MR. SILVERMAN: Objection.

THE COURT: Just a moment. Read back, please.

(Question read.)

THE COURT: Overruled.

A Yes, sir.

Q What was the change and in what way did it affect the compliance function of a firm not participating as an underwriter or selling group member in that public offering?

MR. SILVERMAN: Objection. There are two questions in one. May we have the first question answered and then I can have an opportunity if I wish to object to the second.

THE COURT: Take the first part first, Mr. Kelly.

Q What was the change?

A Well, what it developed was the most prolific public offering period in the history of Wall Street, and the names of companies in late '67, '68, '69, the names of companies that were never heard of were coming to market and some of the stocks were coming to market for pennies and growing to dollars and some came for two or three dollars and growing to sixty and seventy dollars, and many of these companies had very small operations, no cash flow, no history of management and the firm had its own policies as to what it would approve for new issues for the syndicate department, and many of the firms didn't have these and there were venture capital ideas that were coming to public market that some were very successful and some were not successful, and the names --

MR. SILVERMAN: He answered both questions.

THE COURT: First strike the answer.

Put the question again, Mr. Kelly, please.

Q What was the change that occurred?

A The change that occurred, there were virtually hundreds of new names that were coming into the parameter of the compliance department and coming before us for surveillance. Many of these names --

THE COURT: Mr. Cione, it seems to me that could be an answer to a possible next question. Right now I think all we really want is what the change was, if any change occurred.

Then Mr. Kelly can decide whether he wants to ask you how that happened to come about.

What was the change? What issued from some source that said what?

THE WITNESS: Well, because of this tremendous demand for new issues by the public, there were creations of new brokerage firms that created additional surveillance in the operations area for compliance in addition to the overseeing of the sales ideas that we had to survey for the firm as it related to what we were recommending to customers.

It was a tremendously interrelated kind of a situation that bore rise to a great deal of legislation in the early seventies by the SEC.

MR. TESSLER: Your Honor, I move to strike that on the ground of relevance.

THE COURT: Strike it. Try again, Mr. Kelly.

MR. KELLY: I think not, your Honor.

I would like to make an offer of proof, your Honor, that at that time there was a vast increase in new issued, that it was attributable to a demand for new issues in respect of securities and by reason thereof, it became impossible for a brokerage firm to be in a position, much less a registered representative, to be familiar with and knowledgeable regarding the vast profusion of new issue and new companies unless -- except if the particular firm participated as an underwriter, selling group member in the offering that was involved.

THE COURT: Mr. Kelly, you didn't ask him that question.

MR. KELLY: I tried, your Honor.

Q Mr. Cione, how do you place a purchase order in an over-the-counter security?

A Well, upon having a conversation with the client, whether it be in person or on the phone, you would write out an order ticket, it would go to the order room and --

Q Tell me how it comes first to the registered rep.

A It would come by telephone or by personal visit where they are speaking face to face.

Q From whom?

A From either a client or whoever was handling the client's account. If there was someone handling the client's account, the salesman would not be able to deal with that person unless there was a written trading authorization or some authorization in writing for that client to act, for that person to place orders for whoever they may be placing orders.

Q When the registered rep receives an order, what happens after that?

A That order gets put on an order ticket by him, gets teletyped to the order room.

Q Where is the order room?

A The order room is in a separate part of the premises of the firm and there we have employees who take these teletypes and call --

Q Let's assume for the monent we are talking about an over-the-counter stock, not an exchange-listed securities.

What then is done in the order department?

A This is what I am talking about at the time, in 1969. This is what would happen. They would take that order ticket and they would call, if it was an agency transaction, they would call three broker-dealers who were listed in the pink sheets as having made a market in that stock and they would try and get the best agency execution on checking those three markets, and they would execute the order whether it be a market order or limit order, as best they could, and forward a report by teletype or by phone back to the salesman.

MR. TESSLER: I move to strike, your Honor, on the ground of relevance.

THE COURT: I will take that.

Q How many over-the counter stocks were publicly traded in 1969 and 1970?

A There were --

THE COURT: Where, in this jurisdiction or North Jersey or where?

MR. KELLY: Total, in America.

A Well, the National Quotation Services is a pink sheet service that covers the United States, and it has a listing of approximately 25,000 companies. In addition to that, there were approximately 5000 companies that were not listed in the pink sheets who had public trading markets that you could get a quote and execute an order for.

Q On these pink sheets, what would appear as respects a security?

A What would show is the name of the company, the name of the brokers who were making a market in that stock, and the price that they were quoting, the bid side and the offering side and their telephone number.

Q Would that include every brokerage firm throughout the United States who was quoting on a security or making a market?

A It would.

Q Some stocks had one marketmaker, some ten, some twenty, some had three. It was the professional guide to finding the market in the over-the-counter market.

Q When did you first talk with Dr. Rolf?

A I believe in the middle to late January 1971.

Q And tell me what was said in the discussions that you had with Dr. Rolf?

A In my first conversation I told him I was sending him a complaint that I had received from someone concerning Mr. Aki Yamada, who I knew to be the agent handling his account, from a review of our records. I wanted to advise him that this was coming and that we would not execute any more orders for Mr. Yamada until this complaint in some way could be resolved to my satisfaction.

Q Subsequent, did you have any further discussions with Dr. Rolf?

A I did. I had numerous conversations with him.

Q Will you tell me the substance of the conversations that you had with him?

A When Dr.Rolf received the complaint, he was concerned about what he should do as it related to Mr. Yamada, and he began to tell me about partnerships that he had invested in, and he didn't know the percentage he had, he didn't know how much money he had, but he had told me about Mr. Yamada's background and how he had gotten him involved in some of these private partnerships with other investors.

I tried to elicit from him what his interest was, how much money he had involved, did he have papers, did he have anything signed. He said he never got them, Mr. Yamada had promised him these papers from time to time --

MR. TESSLER: Your Honor, with respect to my client, I would move to strike any reference to this hearsay conversation, what Mr. Rolf told Mr. Cione at that time. Not part of the issues in this complaint.

THE COURT: Granted as to Yamada.

MR. TESSLER: Thank you.

A (continuing) To go on, the thrust of what he was talking about, he was concerned about what he should do and how he should get his information. What I told him to do very simply, was -- and he was continuing in conversations with Mr. Yamada at this time -- I would like to fully get into some of the conversations he related to me he had with Yamada and the advice I gave him in connection with at least one of those conversations.

Q You can't testify at this point to what Yamada said. You can testify to what Dr.Rolf told you.

A Well, what had transpired was, I told him to get counsel. I told Dr. Rolf that he should get counsel. I told him to go to regulatory bodies. I told him to try to find out where his partnership papers were. I told him whenever he spoke to Mr. Yamada he should write things down, don't do anything over the telephone without writing it down. I sent him to two very prestigious law firms to pursue his complaint.

It looked like there was going to be an after flow of additional problems and I was just trying to tell him to get himself some professional legal advice as quickly as possible, that I was an attorney but I was in no way in a position to advise him legally, but what I could do was to tell him to get a regulatory body or a law firm.

Q Did he ask you to do anything?

A He sent me a couple of letters. He wanted me to analyze his papers that he was sending me, the reference he had to certain papers and then he asked me to appear with him at a brokerage firm concerning one of his investments and he asked me to try to get the copies of the partnership papers from Mr. Yamada's counsel.

Q Did you go with him to a brokerage firm?

A I went with him to D.H. Blair.

Q Do you recall what the security was that was the topic of conversation?

A Yes, sir.

Q What was it?

A Delanair.

Q In these discussions with Dr. Rolf, what if anything did he tell you about Mr. Stott?

A Well, he never referred to Mr. Stott other than the fact that Mr.Stott had given him the name of Yamada and Geddes as investment advisors, and he told me that he discussed what he wanted to do with his stocks and he picked Mr. Yamada over Mr.Geddes and over some others that he had discussed his investment objectives with.

Q Did he make any complaint to you about --

THE COURT: Just one moment, please.

After the word "Geddes" would you read the portion?

(Record read.)

THE COURT: All right.

Q Did he voice to you any complaint respecting Mr.Stott?

A Never.

MR. KELLY: I have no further questions.

THE COURT: I have two or three here.

Mr. Cione, you spoke of the firm's policy regarding suitability with reference to customers' accounts, securities in customers' accounts. Then you indicated that all of the securities in Dr. Rolf's account by virtue of the firm's policy had been found to be suitable

Now, that statement that you made pertains to what period of time with respect to Dr. Rolf's account?

THE WITNESS: The entire period of time from 1965 until the time that I -- until the account left the firm. I had never been apprised of any problem nor did I come across any problem. When I personally ran over and inspected the daily trades of the firm --

THE COURT: That is then from May of '69 until May of '71 or thereabouts?

THE WITNESS: Yes, sir.

THE COURT: In any event, until you told Dr. Rolf that your firm would no longer entertain the orders of Mr. Yamada.

THE WITNESS: Then his account was handled by someone else.

THE COURT: So it even goes beyond that?

THE WITNESS: Yes, sir. It was handled by someone else for a short period of time and he called me and sai this is Mr. Heely I referred him to, and he said Mr. Heely was too conservative, could I get him another registered rep that wasn't as conservative, and I said, you have been through an awful lot and you are telling me now, you know, you want your money back from Yamada and you don't know how much money you have and now I give you a conservative registered rep and you tell me you want somebody who is going to do a little more aggressive speculation. I said I don't think I can advise you as to who else to use other than Mr. Heely.

MR. SILVERMAN: Your Honor, I move to strike his answer as not being responsive to anything that your Honor asked of this witness.

THE COURT: All right, strike that.

Now, the study that you spoke of which led you to this conclusion about suitability, did that assessment of the stocks in Dr. Rolf's account include an assessment of stocks purchased elsewhere, that is, throu other firms but delivered into the Eastman Dillon account for Dr.Rolf?

THE WITNESS: No. We would not assess those stocks. A stock that was purchased at another firm, I woul not make an assessment, if the stock was purchased at another firm or bought in an unsolicited basis or bought through another professional manager.

THE COURT: Then what stocks would you say had been assessed pursuant to this firm policy between May '69 and the spring of '71?

THE WITNESS: When I tried to -- maybe I --

THE COURT: LEt me tell you very explicitly what I am inquiring about.

You were asked a question which led to your answering more or less as follows: That during the period from May of '69 to the spring of '71, your firm had a procedure that it employed regarding suitability, and I think your answer in short was, there were no unsuitable stocks in Dr.Rolf's account by virtue of this policy of your firm that you say was applied.

THE WITNESS: We had no reason to believe that the issues being purchased at our recommendation were unsuitable.

THE COURT: Could you give me a couple of examples from some of these records, and we will make any available that you want, of this type of security you are talking about. I don't understand what securities you can be talking about I perhaps have missed something here

MR. SILVERMAN: Your Honor, I think I can give him a statement that might help him. This is December 31, 1970 monthly statement of Eastman Dillon.

THE COURT: Has it been marked at all?

MR. SILVERMAN: Yes, and it is in evidence. It is D-20 in evidence.

THE WITNESS: This account would not have been able to purchase these securities unless these securities were solicited for purchase by our employees. The account people handled by a professional money manager, and there were thousands of accounts at this time that had names of securities that were unknown to us that were handled by professional money managers, we wouldn't have queried these other than to find out who was making these recommendations. If that query was made to the registered rep, it would have been an oral query. Otherwise the query would have been done by reviewing the new account form and the attached papers to see who had the authorization to handle the advising of this account.

I am sure a review of those papers would have shown a trading authorization by Yamada, there may have been then a followup query saying who is Yamada, and he would have said an investment advisor and the surveillance person in my department would not have gone any further.

THE COURT: Would it be correct to say that if all these securities listed on D-20 in evidence, for that matter all of the securities which have been our concern here for the period in question, meaning by that May 1969 to spring 1971 period, if all of those securities were in that account by virtue of orders placed by Mr. Yamada, that there really would have been no determination of suitability concerning those shares because of the involvement of Mr. Yamada as what you call a money manager.

THE WITNESS: Yes, sir.

THE COURT: And that would include any shares which were purchased through Eastman Dillon at Yamada's orders for Dr.Rolf as well?

THE WITNESS: Yes, sir.

THE COURT: So that it is not a fair conclusion to be drawn that there were no shares, as far as you were concerned, there were no shares which were determined by your firm to be suitable or unsuitable because all of these orders, if I understood you correctly, were placed by Mr. Yamada once the Yamada trade authorization was signed?

THE WITNESS: That is exactly right, sir. We would have forwarded to Yamada, I would say, literally dozens of recommendations the firm was making and it was up to him which recommendation he wanted of those. If he chose not to pick them and to use someone else's research that was his choice.

MR. TESSLER: Your Honor, I move not only to strike the last answer as totally conclusory, but I respectfully move to strike this witness' whole line of testimony as to the fact that Blyth EastmanDillon determined that these stocks were suitable for Dr. Rolf. It is clear from your Honor's question that the determination of suitability --

THE COURT: All right, stricken.

Let me put this question to you and perhaps you can clarify it: What was the nature of Dr.Rolf's account at Eastman Dillon before Mr.Sterling became ill, and then after he became ill and died, and also after the trade authorization to Yamada was signed by Dr. Rolf? That is three periods that I am concerned with.

THE WITNESS: In the period that Mr. Sterling handled the account up to the illness, the account was an aggressive trading account. It dealt in New York Stock Exchange speculative growth securities. That is the history of the account.

THE COURT: And it was what you would have at that time, perhaps even now, have referred to a discretionary account?

THE WITNESS: It was,sir. No question about it.

THE COURT: Now, let's take the immediate post-Sterling illness. Was the account then somewhat -- what was the nature of the account?

THE WITNESS: The nature of the account then was a speculative, and I would say --

THE COURT: This is before Yamada was in the picture?

THE WITNESS: No.

THE COURT: Let's see if I recall correctly.

I am talking about March '69, Mr.Sterling is said to have become seriously ill and it was August when he died, and Yamada came into the picture when?

THE WITNESS: April.

MR. TESSLER: Late April, y our Honor.

THE COURT: We are really then talking about March and April, the pre-Yamada but post-illness of Mr. Sterling.

THE WITNESS: I would say it was a dormant account with speculative growth securities in there for a period of four to eight weeks.

THE COURT: Those speculative growth securities had come in there under the supervision of Mr.Sterling?

THE WITNESS: At the ordering of Mr. Sterling and supervision, and the supervision of the firm.

THE COURT: Let's take the period following trade authorization executed to Yamada. What was the nature of the account?

THE WITNESS: The account was a blend between an investment, a speculative investment account, as well as a speculative trading account. It had gone into the new issue market --

THE COURT: I am not sure I have made my question clear. That describes the makeup of the investment

I am more interested in how the account would be characterized by the firm, for example, in relation to its former status as a discretionary account. What, if anything, did it change to after the execution to Yamada of the trade authorization by plaintiff? What do you call that kind of account?

THE WITNESS: It is now a managed account, - outside managed account.

THE COURT: It then changed, in other words, from having previously been a discretionary account to what in your fusiness you would call a managed account?

THE WITNESS: In other words, the difference being an inside managed account and an outside managed account.

THE COURT: Are those words of art in your field?

THE WITNESS: Yes, sir.

THE COURT: This is the first time I have heard it since we have been on trial, I believe. It became --

THE WITNESS: Inside with Bud Sterling, and outside with Mr. Yamada.

THE COURT: When Sterling was alive it was a discretionary account. Is that different from a managed account?

THE WITNESS: No, sir, they are synonymous accounts. Some firms, in addition to the commissions charged him, charge an advisory fee. That is another type of managed account.

THE COURT: So that during Sterling's time would you say it was an inside managed account?

THE WITNESS: Yes, sir.

THE OOURT: After Sterling's time and after the trade authorization to Yamada would you call it an outside managed account?

THE WITNESS: It was, sir.

THE COURT: Was it anything other than that? Is that all it was, an outside managed account?

THE WITNESS: That would be my classification or characteristic name to that account.

THE COURT: All right.

Mr.Silverman.

THE WITNESS: Do you want the third period, your Honor?

THE COURT: What would that be?

THE WITNESS: The third period got into the conservative non-trading --

THE COURT: That is the Heely period?

THE WITNESS: Yes.

THE COURT: That is post-time period as far as the complaint is concerned, isn't it?

MR. SILVERMAN: We make no claim about that.

THE COURT: So we won't go through that.

CROSS-EXAMINATION

BY MR. SILVERMAN:

Q Mr. Cione, can there develop a relationship of trust and confidence between a brokerage firm and a customer?

A Yes.

Q In Dr.Rolf's account where he signed a trading authorization to Mr.Sterling, a partner of Eastman Dillon and for five and a half years Mr. Sterling had discretion to buy and sell for Dr. Rolf's account, would youcharacterize such a relationship as one of trust and confidence between the brokerage firm and the customer?

A That was according to Dr.Rolf. A trust and confidence --

Q I want to know from you. Would you characterize that relationship as one of trust and confidence with a brokerage firm?

Where a brokerage firm had the power to manage the customer's money and did so for five and a half years.

A It was Bud Sterling's trust and confidence and had BudSterling gone to Merrill Lynch that is where

Dr.Rolf would have gone.

Q I asked you if there was trust and confidence in that relationship and your answer is yes, is that right?

A Yes, a qualified yes.

Q After Mr. Sterling became sick or disabled, and his account was assigned not to a partner and not to a security analyst, but to a registered representative, did Dr.Rolf keep the account with Eastman Dillon, yes or no?

A By saying "keep the account with Eastman Dillon"

Q Did he keep his money and securities there?

A That's what he did.

Q Did Dr. Rolf give instructions to his investment advisor who he selected on the recommendation of Eastman Dillon to effect orders wherever possible through Eastman Dillon? Do you know that?

A I am sorry, I got lost in the beginning of your question because of some of the verbiage in there.

Would you repeat it?

Q I will rephrase it.

During the Stott-Yamada period, May '69 through March '71, do you know whether Dr. Rolf gave instructions that orders whenever possible were to go through Eastman

Dillon and Mr.Stott?

A No.

THE COURT: Instructions to?

Q Instructions to Mr.Stott and Eastman Dillon.

A I do not know that.

Q If Dr. Rolf had given such instructions to Mr. Stott and Eastman Dillon, would you say that that would indicate a continuing condition of trust and confidence between the brokerage firm on the one hand, Eastman Dillon, and the customer on the other hand, Dr. Rolf, yes or no?

MR. KELLY: Objection.

THE COURT: I will allow it.

A No,sir. Would you like to know why?

Q Do you know whether Mr.Stott was influencing any of the decisions being made in Dr. Rolf's account during the Stott-Yamada period?

A Did I know then?

Q Did you know then?

A I didn't know then.

Q If you believed, or if you had information that Mr.Stott was influencing the decisions being made in Dr. Rolf's account, would you have subjected that account to scrutiny? Would you believe that Eastman Dillon would have a duty to scrutinize that account, yes or no?

A It can't be answered yes or no. I would have to determine that there is a professional manager and find out how Mike Stott is influencing the professional money manager and a review of the account would show that there was not an influencing of a professional money manager because in there, there were stocks that weren't underwritte by our firm, they were private placements and --

Q On my question you would say no, you don't believe that Eastman Dillon would have a duty to scrutinize the account if you obtained evidence that Mr.Stott was influencing decision in the account, is that right?

A That is not what I said. That is why I am trying to explain what would happen. If there was an influence --

Q Let me go on.

THE COURT: Can we get an answer to the questio

A If there were an influencing in the account, we would have queried the influencing, and on our query, in essence was the making of recommendations is not --

MR. SILVERMAN: Your Honor, I move to strike anything after we would have queried the account.

THE COURT: Why don't you state your question again so we know exactly what it is.

Q If you had evidence that Mr.Stott was influencing decisions being made in Dr. Rolf's account, would you believe that Eastman Dillon would have a duty to scrutinize the activity in that account, yes or no?

A To the degree of the influence.

Q Do you know whether Dr. Rolf was relying upon Mr.Stott to any degree in the management of his account?

A Yes, I do know.

Q If there were evidence that Dr. Rolf was relying upon Mr.Stott because he didn't have complete confidence and trust in Mr. Yamada, would you believe that there was a duty on behalf of Eastman Dillon to scrutinize the account, yes or no?

A That is not the knowledge I have.

Q I am asking you to answer my question, Mr. Cione

A Okay, I am trying to separate your question as to what I would believe from my knowledge.

Q I think that you are able enough to do that. You have been qualified as an expert and you can answer even hypotheticals.

Now I am asking you: If there was evidence that Dr. Rolf was relying upon the judgment of Mr.Stott because he didn't have complete faith and confidence in Mr. Yamada, would you believe that Eastman Dillon would have a duty to scrutinize the account, yes or no?

A To the degree of the reliance.

Q Do you know whether Dr.Rolf ever complained to Mr.Stott about the securities being purchased in this account?

A Yes, I know he didn't complain.

Q If Dr. Rolf had complained to Mr.Stott about the quality of the securities in his account, would you believe that Mr.Stott and Eastman Dillon would then have a duty to scrutinize the account?

A Depending on the complaint and how it was versed

Q So that if there were complaints it wouldn't have been enough, in your opinion, for Eastman Dillon to say, or Mr.Stott to say, go see Aki about it, I have nothing to do with it; Eastman Dillon would, as you have testified, have a duty to scrutinize the account, correct?

A No, sir, that is not my answer. That is not what I meant by the answer.

Q Your answer is in the record.

A I didn't hear that, sir.

Q I said your answer was in the record.

Mr.Cione, Dr. Rolf was an EAstman Dillon customer for five and a half years and during that period of time, '63 to 1969, Eastman Dillon had discretionary power over his account. When he switches to an outside investment advisor, do you then just walk away from him, do you then owe him no duty, do you wash your hands of him, goodbye Dr. Rolf?

MR. KELLY: I object to the form of the question.

THE COURT: I will allow it.

A He is then chosen to sever that relationship with the firm as it relates to managing his account, and he has gone to an outside third party to use his expertise and professionalism in managing the account.

Q So you wash your hands of him, you are finished with him, he has gone --

MR. KELLY: I object to the form of the question, your Honor.

THE COURT: Sustained.

A We have no control.

Q In 1969 did Eastman Dillon have an investment advisory --

A No, sir.

Q 1970?

A No, sir. We had a registered investment adviso

but not a functioning department.

Q You had one at one time, didn't you?

A I think we terminated it in 1967.

Q You testified about the numerous conversations that you had with Dr. Rolf. During the course of these conversations was he seeking help and assistance from you, Mr. Cione, and from Eastman Dillon?

A He was seeking legal advice from me.

Q Was he seeking help from you, Mr. Cione? Was he asking you what should I do?

A He was seeking help in the nature of legal advice.

Q And he was looking to Eastman Dillon for assistance, wasn't he?

A I was not a practicing lawyer. I was an attorney for a brokerage firm and the firm is not authorized to practice law and I referred him to counsel.

Q You received letters from Dr. Rolf in which he asked for your assistance, did you not?

A And I called him and I told him --

Q Answer my question. Did you receive letters where he asked for your assistance?

A I would have to see the letters.

Q I show you what has been marked as Defendants' Exhibit L, for identification, which is a letter dated February 13, 1971, addressed to you, and purportedly sent by Dr. Rolf and I ask you if you received the original of Defendants' Exhibit L.

A I received this letter.

MR. SILVERMAN: I offer Defendants' Exhibit L in evidence.

MR. KELLY: No objection.

MR. TESSLER: May I see it, your Honor?

THE COURT: Yes.

MR. TESSLER: No objection.

THE COURT: Received.

xxx (Defendants' Exhibit L was received in evidence.)

Q In Defendants' Exhibit L, did Dr. Rolf express to you his wishes to keep in close contact with you and to seek your help and guidance in the course that he hoped to pursue, yes or no?

A In the letter, yes.

Q Did you make a written reply to that letter?

A I didn't.

Q Did you give Dr. Rolf assistance?

A I told Dr. Rolf when I got this letter that there is no way that I can do the things in this letter.

Q And you told him that on the telephone?

A I said he has to get counsel and I referred him to a firm in Cleveland and I referred him to a firm in New York.

Q If you did all that, apparently the doctor didn't get the message because he sent a copy of a letter that he wrote to Mr. Yamada, a blind copy to you, dated March 17, 1971, which has been marked for identification as Defendants' Exhibit M, and I ask you whether you received Defendants' Exhibit M.

MR. KELLY: I assume, your Honor, the only part of the question is the last sentence.

THE COURT: Yes.

A As I stated --

Q Did you receive --

A Yes, I received the letter. I recall --

MR. SILVERMAN: Your Honor, it would be helpful if you would instruct the witness to answer the questions responsively and we could move much more swiftly.

THE WITNESS: Your Honor, I recall reading this letter.

THE COURT: One moment.

MR. SILVERMAN: I am now going to offer it in evidence.

THE COURT: Any objection?

MR. KELLY: No objection.

MR. TESSLER: May I see it, your Honor.

THE COURT: Yes.

MR. TESSLER: No objection.

THE COURT: Received. Let's mark these as plaintiff's exhibits, not with letters. Exhibit L and Exhibit M should be marked --

xxx (Defendants' Exhibit L was remarked Plaintiff's Exhibit 22, in evidence.

Plaintiff's Exhibit 23 was received in evidence.

MR. KELLY: May I say, your Honor, I intended to put this in evidence as well as other documents, but again, I can only do it in a certain way and at a certain time.

MR. SILVERMAN: Your Honor, I understand Mr. Kelly has no further witnesses after Mr. Cione.

MR. KELLY: I will offer documents.

THE COURT: Next question.

BY MR. SILVERMAN:

Q Did you make any reply to Dr. Rolf in writing to Plaintiff's Exhibit 23?

A No, sir.

Q Did you call him about Plaintiff's Exhibit 23, when you received it?

A At that time --

Q Just tell me did you call him, yes or no.

A I don't recall. We spoke often. I don't recall whether our call was precipitated by me or by him, but --

Q What did you say in these frequent or often telephone conversations that you had with Dr. Rolf?

A I continually advised him to get the documents that he was referring to, that he was a part of as related to his investments with Yamada. I said press the man to find out where your assets are, press the man to find out what your percentage is, press the man to find out who else your partners are, and try to find out from your partners what they have; try to find out what is going on as it relates to these entities that you are telling me that you are involved with.

Q Did Dr. Rolf sendyou his Seljo partnership agreement or any papers having to do with Seljo, and ask you to review them?

A He sent to me some papers. I don't recall what they were, but at the time I first spoke to him he didn't know what his interest was, what he had in Seljo and he didn't know if Seljo had been involved in a merger in Everest and he didn't know whether he was in Takara partners. I said, "Look, if you get your papers and send them to me, I will look at them and maybe I can tell you what you have."

Q And he sent you his papers, is that right?

A I would have to be refreshed as to whether he sent them.

Q When you spoke with Dr. Rolf, you found him to be in these frequent telephone conversations, confused and groping, is that right, as to what had happened to him?

A No, sir. He knew more than I knew about it.

Q Are you a security analyst?

A I am not a certified financial analyst.

Q Are you a security analyst, Mr. Cione?

A No.

Q You testified that Dr. Rolf's account while it was handled by Mr.Sterling was very aggressive, is that correct? Did you use the words "very aggressive" or am I misstating what you said?

A It was aggressive.

Q I am going to show you Yamada Exhibit A in evidence, which represents the portfolio of Dr. Rolf as of 4/30/69. I am going to ask you whether you consider General Electric Company to be an aggressive company, as of that date, 4/30/69.

THE COURT: Just a moment. I don't recall whether the characterization of the account as aggressive was elicited during Mr. Kelly's direct examination of the witness.

MR. KELLY: It was not, your Honor.

THE COURT: Then to the extent that it was elicited by me, I will strike those references.

MR. SILVERMAN: Thank you, your Honor.

May I hand up Yamada Exhibit A, your Honor. I don't know if you have that exhibit.

THE COURT: Thank you.

MR. TESSLER: If your Honor has stricken the reference what is the purpose of the question?

MR. SILVERMAN: I am withdrawing the question.

Q You mentioned all the investment advisory accounts you had in Eastman Dillon. Wasn't Dr.Rolf's accoun kind of sui generis in your opinion?

A Would you like to explain it?

Q Was it one of a kind? Was it a unique kind of account?

MR. KELLY: I object to that.

THE COURT: I will allow it.

A It was not.

Q It wasn't like the Chase Manhattan Bank, a pension; it was a 62 year old doctor who had been a custome of Eastman Dillon and who was now in the hands of Mr. Yamada. Did you have any other customer, to your knowledge that fell within that category?

A I believe --

Q Yes or no, did you have any other customer at Eastman Dillon that fell into the category of Dr. Rolf. In other words, he had been an old customer, managed by Mr.Sterling and then he went over to Mr. Yamada.

A That went to other investment advisors. Sterling's other discretionary accounts went to other professional money managers. They didn't go to Yamada, but they went to other professional money managers.

Q Do you know whether any of the other customers kept their accounts at Eastman Dillon and kept Eastman Dillon as a custodian for all their securities, yes or no? Do you know that? Don't guess. Do you know it?

A I don't recall.

Q You said, in answer to the Judge's question about the period when Mr.Sterling became incapacitated and t time Mr. Yamada and Stott took over, that the doctor's account was dormant.

I show you Defendants' Exhibit A-4 in evidence and I will ask you to examine that statement and tell me whether after examining it, your testimony that the account was dormant was correct.

A In a qualified sense, yes.

Q Dormant means, as I understand it, that there were no trades in the account, is that right?

A No,sir.

Q Were there trades in Dr. Rolf's account during the period of time in which Mr.Sterling became incapacitated and Mr. Yamada received trading authorization?

A Apparently,yes.

Q Who was authorized to make those trades, Mr.Sel

A Whoever Dr.Rolf was speaking to, if he was speaking to anybody.

THE COURT: You mean at Eastman Dillon?

THE WITNESS: Yes,sir.

Q Do you know who he was speaking to?

A I don't.

Q Did you make any attempt to determine who was trading in Dr.Rolf's account during the time that Mr. Sterling alone had trading authorization?

A I didn't. I had no reason to believe discretion was being exercised.

Q Would you tell us what stocks were purchased and what stocks were sold during the period that you told the Court the account was dormant?

A There was a thousand shares of Talcott National sold, a thousand shares of Asamera Oil bought three days later and on the same day a thousand shares of Occidental Petroleum were purchased. I am sorry, that was sold. TheTalcott was sold, Asamera was purchased and the Occidental was sold.

Q You said that you had a ten trade per month rule as a litmus to spot churning.

A No, not to spot churning, to spot activity.

Q There were several months in which the trading in Dr.Rolf's account was more than ten trades per month, is that right? Do you know that?

A I don't know that.

Q Let's see if we can help you. I show you Defendants' Exhibit D-1 in evidence and askyou if you will -- this is the monthly statement for May 31, 1969, Eastman Dillon -- I will ask you if you will count the number of trades for us as reflected on that exhibit and tell me how many trades you had.

A This would have been kicked out this month.

Q You didn't answer my question. How many trades did you have that month?

A There are some multiple trades here that would have been one trade.

MR. TESSLER: Your Honor, Mr.Silverman asked the witness if he knew if there were more than ten trades in some months and the witness said he didn't know. Now he has shown him a piece of paper and he is asking him how many trades were there. I think the piece of paper speaks for itself. I don't think it changes the witness' answer. It obviously doesn't refresh his recollection. On behalf of Mr. Yamada I certainly will not dispute the fact that in that month there were more than ten trades and perhaps Mr. Kelly is willing to concede that fact too, so we can proceed.

MR. KELLY: Which month is that?

THE COURT: March of 1969.

MR. SILVERMAN: I think that is May of 1969.

THE COURT: May.

A Twelve.

MR. KELLY: I would agree, over ten.

A There were twelve trades.

Q If you had any evidence that Mr. Yamada was effecting trades in Dr.Rolf's account, at the instance of Mr.Stott in order to generate commission business for Mr. Stott and to "keep him quiet" would you have checked that account? Would you have believed that it would have been

Eastman Dillon's duty to examine that account?

A The reasons you stated, yes.

Q I am going to show you Defendants' Exhibit D-3 in evidence, and I will ask you if that doesn't reflect that there were eighteen trades in Dr. Rolf's account for July of 1969.

THE COURT: Is it conceded that there were more than 10?

MR. TESSLER: I have no interest in disputing that fact.

THE COURT: Are you satisfied?

MR. SILVERMAN: Yes, I am.

A I count 16 and there might be a few more.

Q Would you agree that in D4 which is August 31, 1969, there were more than ten, in fact, there were 15?

A There were more than 10. Shall I stop when I get to 10?

Q Yes, that's fine.

Now we see in a four-month period, three of those months there were more than 10 trades, three out of four of those months, and yet, Mr.Cione, EastmanDillon never checked that account for churning or excessive trading during the period, yes or no?

A When you say checked, we checked the account.

Q You checked Dr. Rolf's account for churning when there were four months in which three of them were over your limit, you checked it for churning?

A The account was kicked out by the computer and was reviewed and it would have been determined a professional money maker was handling it and that is the checking.

Q That would take about a minute to even check it, would you say, and Mr. Yamada is handling it and finished. That is the extent you checked this old customer's account?

A It takes longer than that.

Q How long does it take, five minutes?

A Each inquiry like this takes, I would say, 10 to 15 minutes before you get the new account forms.

Q And who would do the checking? Did it come to you?

A Maybe if I --

Q Do you recall that this account came to you for checking, yes or no?

A No, it didn't come to me.

Q Did it come to a clerk in your office, one of your 18 assistants?

A An investigator in my office.

Q Mr.Cione, I am going to show you Defendants' Exhibit T in evidence, and refer you to the fact that it is a confirmation issued by a firm other than Eastman Dillon, and that it has under DVP which you have now explained to us means delivery against payment, the names Eastman Dillon and attention MichaelStott.

My question to you is: Is it usual in a custodian account when there is a delivery against payment to put down the name of the registered representative as well as the firm?

A It is up to whoever is giving the instructions to the firm.

Q Wasn't that a special instruction to your firm, that it mentioned Michael Stott? Do you regard that as a special instruction, yes or no?

A No, not a DVP account.

Q I show you Defendqnts' Exhibit U and I ask you first to note that it is a confirmation of a firm other than Eastman Dillon and that it reflects that there should be a carbon copy sent to Eastman Dillon, attention Michael Stott.

I ask you whether it is usual in such a situation tosend copies of confirmations addressed to the broker.

A It is not usual -- it is not unusual to send confirmations in a DVP account to the broker. Now, in most cases when it is --

Q Thank you. You have answered my question.

You stated in your direct, I believe, that it was the policy of Eastman Dillon to review every single security that was purchased that day, is that correct?

A Yes, sir.

Q Did you review the securities that were purchased each day for Dr. Rolf as well?

A We reviewed them for every trade done in the firm.

Q What did you do when you came up with six or seven stocks that had no listing in Standard & Poors? Did you spot that?

A Surely.

Q And did you have a gut reaction when you spotted that, Mr. Cione, that this was not a stock that should be purchased?

MR. TESSLER: Objection.

MR. KELLY: Objection.

MR. TESSLER: Objection, your Honor. It is a conclusion of counsel.

THE COURT: Sustained.

Q Did you have any reaction to the purchase by Eastman Dillon of stocks of companies that were not listed in Standard & Poors?

A Yes.

Q And what was that reaction?

A We would check to see if the transaction was solicited or unsolicited. If it was solicited we would chec to see if there was research approval or a recommendation, and that is what would be done. We would determine who was handling the account.

THE COURT: When you say unsolicited, you mean what?

THE WITNESS: When I say unsolicited I mean where the client called and purchased the stock without a recommendation from our employee, or where the stock was done by a professional manager where he made the decision as to whether it should be both or not both for the accounts he was handling.

THE COURT: Was any of this done by computer, any of this process?

THE WITNESS: No, sir. The screening of the solicited or unsolicited?

THE COURT: No, the question of determining whether this was a B-plus stock or --

THE WITNESS: No, sir, that is done manually.

THE COURT: Wouldn't it have sufficied in a case such as this, given what you told us here, Mr.Cione, wherever a money manager was involved to have simply have had a procedure, whenever something came in which pertainined to a particular account and you saw it was not a B-plus type of security, just stamp on the client's file "M.M." money manager, and then you wouldn't have given it any attention at all. Isn't that really essentially what happened here, you really didn't give it any attention if a money manager was involved?

THE WITNESS: After a couple of inquiries would have determined the account, and the surveillance -- that is what you do to get the work load out of the way, you know the account and you know there is a money manager and you don't go into the account but there is still -- well that is essentially it.

THE COURT: From what you have told us here, you say if there is a money manager, that is not your concern, that is between the client and the money manager and they could have B-plus, A-plus, C-plus, D-plus, that is not our business, that is between him and his investment advisor, why bother? Why not just say move on to the next bundle of workof which I am sure you had a lot to do.

THE WITNESS: We didn't have the computer capability for that.

THE COURT: You could have used a different color folder for your clients who have money managers and every time you saw a green folder it meant money manager, let's assume that, and you wouldn't review it, look at it, wouldn't have a thing to do with it, it wasn't your business or concern.

THE WITNESS: We do have a designation of institutional account on many of the managed accounts, you see, so that does a lot of the surveillance.

THE COURT: You have a what now?

THE WITNESS: A designation, institutional account, and that takes a lot of the surveillance out of the daily work load of the person making the surveillance. In other words, Chase Manhattan Bank would be institutional.

THE COURT: So you immediately pass on and don't bother with that.

THE WITNESS: Yes, but some of then may not be coded that way and you may run across it two or three times and then realize it is an institutional, and then you would begin to pass on.

THE COURT: So as a practical matter then, you could have had it, that is, a system akin to the institution designations which caused you to know to move on, don't bother with it, and the end result was, even without having it, that was the same manner in which the firm handled the account of an individual, that is, you handled it in the same fashion as an institutional account, as a practical matter.

THE WITNESS: As a practical matter, yes, sir.

BY MR. SILVERMAN:

Q Mr.Cione, do you recall when your deposition was taken by me in January of 1975?

A Yes, sir.

Q You were asked the following question and gave the following answer, page 44:

"Q Was there any policy at Eastman Dillon against accepting orders for securities about which there was no financial information published in Moody's or Standard & Poors and Walker's?

"A Well, no policy. That is a gut reaction."

Was that answer truthful when given?

A May I see that?

(Handed to witness.)

MR. KELLY: What page is that, Mr. Silverman?

MR. SILVERMAN: Page 44.

THE WITNESS: He read approximately one-tenth of the answer.

Q If you would like to read the rest, you can read the rest and I will move to strike the rest as not responsive. Go right ahead if you care to waste Court time.

MR. KELLY: I will object to this method of examination, your Honor.

THE COURT: Strike the witness' last answer and counsel's comments and move on to the next question.

Q That gut reaction -- was that answer true, by the way, when you gave it?

A Yes.

Q That gut reaction didn't apply to outside managed accounts, is that right?

A For the most part, yes.

Q Have you ever heard of instances where investment advisors and brokers colluded together in the management of a customer's account?

A I have heard about it in my lifetime, yes.

Q It is a very tempting situation, isn't it, Mr. Cione? Here is a man that manages other people's money and he can award a substantial amount of brokerage commission, right?

MR. KELLY: I object to the question, your Honor.

THE COURT: Sustained.

Q Do you have any procedures at Eastman Dillon to defect when there is any collusion between a broker and an investment advisor?

A Yes.

Q Would you describe what those procedures are, and limit it to 1969 and 1970, if you please.

A We review the mail of the firm. All the mail of the firm before it goes out or before it comes in. In recommending professional money managers or investment advisors, we try to find out if there is a specific relationship between any one salesman and any one advisor. What we would like, when a client asks for advisory advice, money management advise because of our discretionary policy at the firm, the accounts handled on a discretionary basis are given the names of money managers that may handle the accounts on a discretionary basis; then we leave it to the client to determine who he wants to pick, but what we are after is to make sure that no one salesmen develops a relationship between any one money manager and all his accounts.

We do tht surveillance for that reason.

Q Do you, on any regular basis, question the salesman to see if he is giving any kickbacks or getting any kickbacks with the investment advisor?

A I give lectures continually --

Q I didn't ask you that. Do you question any of the salesmen as to whether there is any kickback relation going on?

A If that particular situation comes to my questioning, yes.

Q From the time Mr. Yamada became the investment advisor until the termination of his period as investment advisor, did you ever question Mr.Stott as to whether he was getting anything from Mr. Yamada in relation to --

MR. KELLY: I object to the question, your Honor. There is no basis in this record for any such supposition, for any such question. There is no such charge made and there is no evidence that there was any kickback whatever to anybody.

THE COURT: The question was whether he was getting anything. There is in the record Mr. Yamada's testimony that could lead one to the conclusion that something was exchanged.

Overruled.

THE WITNESS: Would you please read the question?

THE COURT: First we will take a brief recess.

(Recess.)

(Question read.)

Q Did you ever question Mr.Stott as to whether he was getting anything of value from Mr. Yamada?

A No.

Q Did you know that Mr. Yamada was trading other accounts through Mr.Stott and he was getting commissions from those accounts?

A I do not recall if I knew at that time.

Q When you checked to see whether there is anythin going on between a broker and an investment advisor do you look to see whether the broker is getting reciprocal busines from the investment advisor?

A Reciprocal business, there is a difference.

Q Getting business from other clients of the investment advisor. Do you look to see whether the broker is getting commission business from other clients of the advisor, yes or no?

A If it comes to our attention and looks suspicious, we would query it, but nothing came to my attentior

Q Do you know what stocks Mr.Stott was buying for Mr. Yamada's other clients?

A Do I know? Yes.

Q What kind of stocks, stocks that Eastman Dillon was recommending?

A For the most part, no.

Q So then you knew that Mr. Stott wasn't getting the business because he was recommending securities to Mr. Yamada, he must have been getting it for some other reason, right, Mr. Cione?

MR. KELLY: I object to that question, your Honor.

THE COURT: The question is not necessarily damning --

MR. KELLY: No, your Honor. It is perfectly clear in the record Mr.Stott was recommending securities of Eastman Dillon to Mr. Yamada.

THE COURT: I will allow the question.

A Yes.

Q Did you question Mr.Stott as to the reason for his getting commissions from Mr. Yamada on the trades of stocks, on the buying and selling of securities that were not being recommended by Eastman Dillon, yes or no?

A No, I didn't.

Q Did you at the time, 1969, 1970, total up the commissions that Mr.Stott was getting from clients of Mr. Yamada other than Dr. Rolf? Did your office make any check as to that?

A We do a review of a salesman's commissions in relation to any large accounts he has, and that account didn't come up as being the bulk of Mr.Stott's business.

Q You mean theRolf account?

A TheRolf account or the investment advisory business in no way came to my attention as being a percentage of business that we would be concerned about.

Q Was Mr.Stott a big producer at Eastman Dillon?

A I don't believe that Mr.Stott was -- he was a good producer. He was a big producer, big producer but not one of the biggest producers.

MR. SILVERMAN: That is all the questions I have your Honor.

Thank you.

THE COURT: What kind of account eventuated at Eastman Dillon after the trading by Yamada in plaintiff's acount was terminated?

THE WITNESS: As I recall, in speaking to Dr. Rolf, I referred him to Mr. Heely and he called me and said Mr. Heely was too conservative --

MR. SILVERMAN: Your Honor, Imove to strike that. It is not responsive.

THE COURT: To frame my question more specificall did it become an inside managed account, to your use your expression or an outside managed account?

THE WITNESS: It became an inside agency accour your Honor, as distinguished from a discretionary account where the salesman would speak to the client, make a recommendation and the client would say yes, buy me that, rather than the salesman making the determination and the client then just getting a confirmation without taking part in the decision.

THE COURT: All right, Mr. Tessler.

CROSS-EXAMINATION

BY MR. TESSLER:

Q Mr. Cione, in your preparation for your testimony today or in your discussion of the case with counsel, did you have occasion to determine the amount of commission business that Dr.Rolf's account generated to Eastman Dillon in the years May of 1969 to March of 1971?

A I was in the courtroom when I heard that. I have no reason to get that information in preparing.

MR. SILVERMAN: I move to strike. He was asked a question whether he calculated.

THE COURT: Strike it.

Q Do you know, have you determined, Mr. Cione, the $41,000 figure?

A I have to adopt that.

Q Do you know how much commission business

Dr. Rolf's account generated over the years while managed by Mr. Sterling?

MR. SILVERMAN: I object, your Honot, not relevant.

THE COURT: I am going to allow it.

A I do not.

Q I believe you testified, Mr.Cione, that the policy, the rule that was applied in 1969, that no discretionary accounts could be opened with a partner without your approval, is that correct?

A That policy was in vogue in 1969.

Q Was the policy also that a registered representative who was not a partner could have a discretionary account if it had your approval?

A Could you repeat that? As you were talking the door clicked.

Q Could, in 1969, a registered representative who was not a partner of the firm maintain a discretionary account for a customer with your approval or was that approval limited only to accounts maintained by partners?

A There were no discretionary accounts allowed by salesmen or partners.

Q Without your approval?

A That's right.

Q There were accounts, discretionary accounts allowed with your approval. That was the policy?

A There were no accounts approved.

Q If a partner, in 1969, had come to you and wanted to maintain a discretionary account, that decision was subject to your approval?

A Yes.

Q But the policy of the firm didn't deny that approval, permitted it on such an occasion, didn't it? The policy of the firm permitted a discretionary account to be maintained by a partner so long as that account had your approval, is that correct?

A Yes.

Q Did the policy permit discretionary accounts to be maintained by salesmen who were not partners?

A No, they were not allowed.

Q They were not allowed?

A They were not allowed discretion.

Q Were you ever asked by Mr.Stott to approve his handling of a discretionary account for Dr. Rolf?

A I was not asked. I don't recall being asked for approval on that account.

Q By Mr.Stott?

A By Mr.Stott or the regional partner.

Q By Mr.Stott, sir. That is myquestion.

A By Mr. Stott.

Q Are you familiar with the New York Stock Exchange "Know your customer" rule?

A Yes, sir.

Q Have you read the rule in the course of your duties?

A Yes, sir.

Q Are you familiar with the rule promulgated by the HASD which is similar to the Stock Exchange "Know your customer" rule?

A Yes, sir.

Q Have you read that rule?

A From time to time, yes,sir.

Q When asked his understanding of the purpose of that rule, Mr.Stott said that the purpose of the rule, according to his understanding, was to see that the securities in the customer's account fit the needs of the client.

Would you agree with that expostulation?

A That is in essence part of "Know your customer" rule, the requirements of it.

Q Mr.Stott further went on to say that he considered that an exception to the rule existed when an account was managed by an outside investment advisor. Do you recall that, Mr. Cione?

A I don't recall that testimony.

Q Would you assume for the purpose of my questions that I am correctly stating Mr.Stott's testimony, please.

In your review of the rule as promulgated, is it not true, Mr. Cione, that there is no such exception written into the rule that the rule is not applicable when an outside investment advisor is employed?

MR. KELLY: I object to that question.

MR. TESSLER: Your Honor, this witness has been qualified as an expert in compliance procedure, he said he has represented the rule, he is an attorney.

THE COURT: Yes, but first of all, he has not be questioned about compliance other than in terms of the firm's practices. Mr. Kelly didn't question him beyond a discussion of the witness'understanding of the firm's policies and practices in terms of compliance, with their own rules.

MR. TESSLER: I understand that, your Honor, but he did elicit from him the fact that the witness is an attorney, he is admitted to the bar.

THE COURT: He did, but as I reflected overnight had Mr. Kelly sought to go into that area and had there been objection, I don't think I would have permitted it. Since it didn't arise I will not permit it now.

MR. TESSLER: I would like to try to get it in a different way, your Honor. Of course I will be guided by your decision.

Q In the course of your duties have you dealt with suitability questions and the "Know your customer" rule?

A Yes,sir.

Q In the course of your duties with Eastman Dillon have you had occasion to review the customer rule as promulgated by the New York Stock Exchange and the National Association of Dealers?

A Yes,sir.

Q What is your best recollection as to whether an exception exists in that rule providing in effect that the rule is not applicable when an account is managed by an outside investment advisor?

A The rule has a number of educational circulars and opinions from the staff of the Exchange, and my recollection is that the Exchange has taken the position --

THE COURT: I am not going to allow this. If the witness was able to recite a particular opinion of the SEC by a particular number, there being no objection I might have allowed it. I am not going to allow this, whic is going to be general and I will not have any weighting behind that.

MR. TESSLER: Your Honor, my question was directed to the language of the rule and does the witness recall if there is an exception even grafted in the languag of the rule that the rule is not applicable if there is not an outside advisor.

MR. KELLY: We are talking merely of the language of the rule and asking what is in it and what is no in it in the language as such, rather than in the meaning. It doesn't seem to me that there is any need then --

THE COURT: Is that an objection, Mr. Kelly?

MR. KELLY: I will make it an objection.

THE COURT: Sustained.

MR. TESSLER: I think perhaps the easiest way is to put the rule into evidence, your Honor.

THE COURT: You can cite it and ask the Court -

MR. TESSLER: I believe Rule 405, promulgated by the New York Stock Exchange --

THE COURT: 405 what?

THE WITNESS: 405 of the New York StockExchange.

THE COURT: Subdivision what? Any particular subdivision?

MR. TESSLER: I don't have a particular subdivision, your Honor. I would ask the Court to take judicial notice of that rule.

THE COURT: All right.

Q Mr. Cione, you talked about yesterday 175 to 200, and I think today the figure went to a thousand to 1200 accounts at Eastman Dillon that are managed by third parties.

A Yes, sir.

Q And you have used this morning the term professional money manager, and outside money manager.

Let me ask you this question, Mr. Cione: If my wife wanted to open an account at Eastman Dillon and signed a piece of paper similar to that signed by Dr. Rolf giving me discretionary authority to trade that account for her benefit --

THE COURT: As per the Sterling or Yamada authorization?

MR. TESSLER: Per the Yamada authorization.

Q -- would the firm recognize that authority in me

A Yes, sir.

Q If my girl friend did the same thing would

I have authority to trade for her benefit?

A Yes, sir.

Q If a friend of mine did the same thing, would I have authority to trade for his benefit?

A Yes, sir.

Q Would the firm in the ordinary course make any investigation into my qualifications to trade that account?

A There are questions that have to be filled out for the agent.

Q Assume I would fill out those questions, would there then be any question that I would have the authority to trade those accounts?

A No, sir.

THE COURT: You mean the investment advisory --

MR. TESSLER: Me being the investment advisor.

Q Would it matter or not whether I was a registere investment advisor with the Securities and Exchange Commission?

MR. KELLY: Your Honor, if we are talking at this point about what the questions have been asked, would he have the authority to trade, it is a given fact that he would. I think that there is something else being asked, and I think if it is it should be asked that way. Certainly if anybody has the power of attorney or trading authorization they have the authority to trade, and their authority I think is given, if you assume there is an authorization to do so.

THE COURT: Was that an objection?

MR. KELLY: It is an objection, your Honor.

THE COURT: Overruled.

Q Would it make any difference, Mr. Cione, whether or not I was a registered investment advisor with the Securities and Exchange Commission?

A No, sir.

THE COURT: Is there such a thing, a registered investment advisor?

THE WITNESS: Yes, sir.

THE COURT: Was Mr. Yamada such?

THE WITNESS: No, sir. He didn't come within the requirements of being a registered --

MR. SILVERMAN: I object to that.

THE COURT: Strike that.

THE WITNESS: He was not, to my knowledge, a registered investment advisor.

MR. TESSLER: That is correct. May I have the last question read back.

(Question read.)

MR. KELLY: Your Honor, I press my objection. I don't know what the difference being referred to is. I just don't understand --

THE COURT: Restate the question.

Q It would make no difference, would it, Mr. Cione, whether or not I was registered as an investment advisor with the Securities and Exchange Commission, whether or not I had the authorization to trade an account if there was a power of attorney signed?

MR. KELLY: I object to the question, your Honor. To my mind, it is a legal statement.

THE COURT: I understand the question to seek to elicit from Mr. Cione, who is the compliance officer, what the policies and procedures and practices were at Eastman Dillon at the time in question. I think he can answer that.

Q Can you answer it, Mr. Cione?

THE COURT: The question is, it would make no difference at Eastman Dillon.

MR. TESSLER: Yes, whether or not I was registered as an investment advisor with the Securities and Exchange Commission.

A It would make no difference.

Q Would it make any difference whether or not I was an attorney, an accountant or another professional?

a No.

Q Would it make any difference if I had a college education?

A No.

Q Would it make any difference whether I knew anything about the market at all as long as there was that trading authorization signed?

A From time to time we question, when we know a little about -- when we know something that would disqualify the agent, we question the authority.

Q If my wife came in and said I want my husband Barry Tessler to have authority in my account, if she has made that statement to you, would it make any difference whether I knew or didn't know anything about the market? Would I be able to trade her account?

MR. KELLY: I object, your Honor. It is an unreasonable series of questions that purport to say something which is meaningless. Of course if he has the authority he has the authority, and that is all these questions are asking.

MR. TESSLER: If Mr. Kelly would concede that, I will go to another point.

MR. KELLY: I will concede if you got the authority yougot the authority,yes.

Q Assume further, Mr. Cione, that I had such authority, from my wife, for instance, friend, relative, my girl friend, or anything you want, I had proper trading authroity to trade their account, and it came out that the account was being traded in excess of ten trades a month. Would you then notice in your records, would you then note in your records that the account was managed by an outside advisor as you have testifies to earlier?

A Not as in the case you are talking about.

Q Why not?

A We determine whether the account was solicited or not. In that case there would not be a professional money maker.

Q Let's assume it was an unsolicited account, that I called in and told the registered representative --

A That is another element we look at, that the third party is putting in orders.

Q Make that assumption, that it is an unsolicited account, would you then go beyond the fact that there were more than 10 trades a month?

A We would go behind the fact in a different way than we would with a professional money manager.

Q What way would you go behind the fact?

A In a husband's trading for a wife, we would not go behind the fact. If a boy friend is trading for a girl friend we would not go behind the fact if those orders were unsolicited-type orders.

Q If I asked you the same question with respect to my trading on an unsolicited basis in stocks that were not on Eastman Dillon's recommended list, would you go behind the fact?

A No.

Q What is your definition of a professional money manager? You used that term many times this morning

A Someone who has an arrangement to receive compensation in connection with the activities that they are performing for the person.

Q If I had such an arrangement with my relative, girl friend or my friend, by your definition then I would have been a professional money manager, is that correct?

A That is stretching it, yes.

Q But am I correct, whether I am stretching it or not?

A That is stretching it. When you receive compensation you become a professional money manager.

Q I assume the answer to my question is yes?

A Yes.

Q And you would not go behind my trades?

A Most likely, yes.

Q It is your testimony, Mr. Cione, the Stock Exchange rules do not require you to go behind my trades, is that correct?

A That is correct in that instance.

Q Now, you say that one of the procedures that Eastman Dillon applies to determine whether or not there is collusion between a broker and an outside investment advisor is that the firm reviews all mail received by the firm either before it is delivered to the registered representative or before it is sent out by the registered representative. Am I correct in restating your testimony?

A That is correct.

Q As part of that review then, did you to your recollection review a letter dated April 15, 1970, from Dr. Rolf to MichaelStott, a copy of which has been entered as Exhibit 1 in evidence, at that time?

A Did I review it?

Q Yes.

A No.

Q Did your department review it?

A Our department does not review the mail. The firm does.

Q Who reviews it?

A The manager.

Q For what purpose?

A To determine whether there is unauthorized trading in the account, to determine whether the client has a complaint as to stocks being bought or sold because most of our problems are when you have a salesman who trades in an unauthorized fashion in an account there may be a complaint as to representations made to the client in the recommending of a stock, the type representations that are made. That is what we are generally required to look for.

Q But it is not your department that is doing it?

A We do it when we do an annual branch office inspection.

Q Other than your annual branch office inspection do you do it?

A No.

Q There has been testimony here about letters that Dr.Rolf wrote to Mr.Stott talking about investments that were made for him by Mr. Yamada, talking about the fact that there was substantial trading in the account, talking about the fact that Dr.Rolf was dealing in founders stock, private stock and new issues, talking about the fact that Dr. Rolf believed he had substantial losses in the account all through the period from late 1969 throug 1970.

Were the facts of any of those letters brought to your attention prior to December 1970?

A No, sir.

Q There has also been in evidence a letter by Mr. Stott to Dr. Rolf in which Mr. Stott claimed, "I am only an order taker," Exhibit E. Was that letter brought to your attention?

A No, sir.

Q Did your department, the compliance department of Eastman Dillon, from the period May of 1969 to January 1, 1970, receive any knowledge as the result of your review procedures of the fact that Dr. Rolf had complaints or questions about the way his account was being handled?

MR. KELLY: I object to the question, your Hono It assumes a fact not established.

MR. TESSLER: All right, I will rephrase.

Q Did your department as the compliance departmen of Eastman Dillon, to your knowledge, receive any knowledge during the period May of 1969 through December 31, 1970, that Dr. Rolf had raised any questions concerning the stocks being bought and sold in his account?

A No, sir.

Q Notwithstanding your review procedures.

A There were none. There were no complaints.

MR. SILVERMAN: I move to strike that.

THE COURT: That wasn't the question, Mr. Cione.

Strike the answer.

The question was whether during the period in question either you or your department ever acquired any knowledge that the plaintiff had raised any questions concerning stocks bought for his account.

THE WITNESS: No, sir. The answer to that is no.

Q Mr. Cione, you stressed in your testimony this morning the fact in your opinion Mr. Yamada was an outside professional money manager, this was an outside managed account.

Did it ever come to your attention prior to your preparation for this case that Mr. Yamada was a money manager or investment advisor that had been recommended to Dr. Rolf, Eastman Dillon's customer, by Eastman Dillon's registered representative?

A I lost track of the time as to when that recommendation was.

Q Any time prior to your preparation for your trial testimony in this case.

A Yes.

Q When did it come to your attention for the first time?

A When I received the complaint in the Armstrong case where Mr. Yamada was a defendant, I called Mr. Stott to find out what the relationship was between Aki Yamada, you know, what he knew about Aki Yamada.

Q When was that, sir?

A That would have been in the beginning of January 1971.

Q Was that the first time you had received any knowledge that the SEC was investigating or inquiring into Mr. Yamada's affairs?

A That was not a SEC complaint. That was a private civil action.

Q Was that the first time then that you received any notice that anybody was investigating or inquiring into Mr. Yamda's affairs?

A Yes, sir.

Q Prior to January of '71, your office had not received any notice that anybody, be it the Federal Regulatory body or a private individual was complaining or inquiring into Mr. Yamada's affairs?

A That's right.

Q I take it then that your office was not queried by the Securities and Exchange Commission in the summer of 1970 regarding the trading in Health Evaluation Systems?

A My office was queried by the SEC for the first time to my knowledge in the summer of 1971, to my recollection.

Q Prior to January 1971, when you received the Armstrong complaint, had you ever heard or did you have any knowledge that Mr. Yamada, the outside money manager of Dr. Rolf's account, had been recommended to Dr. Rolf by Eastman Dillon's registered representative?

A Would you repeat that?

MR. TESSLER: Would you read it?

(Question read.)

A The first time I learned about Aki Yamada and the recommendation was when I sent Mike Stott the Armstrong complaint.

Q Which was January of 1971?"

A That's right, sir.

Q When you spoke with Mr.Stott at that time -- I presume you did speak with Mr.Stott at that time?

A I did.

Q Did he tell you that he had recommended Mr. Yamada to Dr.Rolf?

A He told me he had given the name and address of Mr. Yamada with another.

Q Did he tell you that at the time he recommended Mr. Yamada to Dr. Rolf he didn't know what Dr. Rolf's investment objectives were?

A I didn't ask.

Q Did he tell you at the time he recommended Mr. Yamada to Dr.Rolf he didn't know what Mr. Yamada's investment objectives were?

A He told me about Mr. Yamada.

Q Did he tell you that at the time he recommended Mr. Yamada to Dr. Rolf, he didn't know what Mr. Yamada's investment objectives were?

A He told me about Mr. Yamada.

Q Can you answer my question?

A That question has implicit in it what you would derive from what was told to you about Mr. Yamada.

Q Did he tell you whether or not at the time he recommended Mr. Yamada to Dr. Rolf, he did or didn't know what Mr. Yamada's particular investment objectives were?

A Particular, no.

Q Did he tell you whether or not he knew at that time what types of stocks Mr. Yamada was interested in, at the time of the recommendation, Mr.Cione?

A I don't believe we discussed that.

Q Did you know, according to Dr. Rolf, that at the time that Dr. Rolf asked Mr.Stott to recommend an investment advisor, Mr.Stott was also asked to supervise the account?

MR. KELLY: I object to that question, your Honor.

THE COURT: In its present form, sustained.

Q Assume, Mr. Cione, that at the time Mr.Stott was asked to recommend an investment advisor to Dr. Rolf at which time he recommended Mr. Yamada, that at the same time Dr. Rolf, Eastman Dillon's customer, also asked Mr. Stott to supervise the activity in that account. take that as an assumption. Assuming the truth of those facts --

THE COURT: To keep an eye on.

Q To keep an eye on, to keep more than the debits and credits, assuming those facts, and you had knowledge of those facts, would your procedures regarding the supervision of that account by your department have been different?

A No,sir.

Q In other words, having knowledge that your registered representative had been asked to supervise an account, to keep track of it, you would not have raised any more questions regarding the amount of trade in the account than you did?

A No,sir.

Q Or raised any more questions than you did regarding the quality of the stocks purchased in the account

A No,sir.

MR. TESSLER: I have no further questions.

THE COURT: In plaintiff's account, say for the year 1970, if the turnup had been seven times based on what the computer kicked out and informs your department of, what would you have done under the circumstances of this account where there was an investment advisor named Yamada involved?

THE WITNESS: We would have queried the salesman as to the amount of activity in the account, but we would have made a determination, your Honor, first, and if I don't get cut off I will be able to say what we do in the entire surveillance of this type of situation. We would have gone over the account and if we saw it was actively traded we would have done a P & L. And said to the salesman you better talk to the investment advisor about the account, and the investment objectives specifically, as to what is going on. If you are saying seven times, and that's the amount of activity, what control do you have over the investment advisor, what is the investment advisor's background. We would have gone into that type decision to determine whether or not we in fact at the firm had any connection between the investment advisor and the activity that was going on between him and his client.

I mean, we don't get between the investment advisor and his client, but from time to time you may run into an investment advisor who does not have the professional background and you may discover that as the result of the activity in the account.

In the Yamada situation with credentials we woul not have queried what he was doing in the account. We would not have queried the amount of turnover as related to P & L. As much as you would have where you had a manager who we didn't know what his credentials were, or let's say his credentials were less than Mr. Yamada's.

THE COURT: Tell me why you say that about Mr. Yamada. What do you understand his credentials to have been? We know that he was 26 years of age at the time, that he had graduated from college and had one year at the Harvard Business School. We know that he spent some time, two and a half years was it, at Kuhn, Loeb, and that he had been engaged in research there, and perhaps other things as well. What was this vast experience Mr. Yamada had that causes you to exempt him from that kind of concern?

THE WITNESS: At that time a man who was an assistant V.P. at Kuhn, Loeb would have had to have a track record to get that title.

THE COURT: Even a new assistant vice-president?

THE WITNESS: The street was not accepting new people unless they were very successful in their track records and new young men were emerging as the men in these special new situations with the influx of new companies that were coming into the marketplace. It was a whole new breed that was talked about, being accepted and promoted throughout the industry.

And, Yamada had the credentials from Kuhn, Loeb that went far and beyond the credentials of, let's say, an analyst coming out of Eastman Dillon that didn't have a title. If an analyst went out of Eastman Dillon with a title on his own he would have had the same credentials Yamada did, and many of these men were doing that and making great inroads and they were the professional money managers who were turning mutual funds into very, very profitable investments.

THE COURT: How long was he assistant vice-president at Kuhn, Loeb?

THE WITNESS: I do not recall. If I can interject, I spoke to the compliance man at Kuhn, Loeb about Mr. Yamada. His name is Tom Kane. I spoke to him when I found out in 1971 about Yamada. He said Yamada was one of the top men that they had in the firm, one of the most highly respected analysts in the firm; that he was what we would consider in those days, one of the whiz kids, as they were emerging. I felt confident that Mike Stott had made a proper determination in allowing Mr. Yamada to run the account and in making the reference to Dr. Rolf in givin Mr. Yamada's name and phone number.

THE COURT: I don't know, but I would surmise that Mr. Yamada was, at age 26, maybe eight, nine years out of high school.

THE WITNESS: If I could go into numbers of people, we had a man under 30 years old, doing what Mr. Yamada was doing and doing it very successfully.

THE COURT: Did you make him an officer of Eastman Dillon?

THE WITNESS: Yes. At the time it was a partnership.

THE COURT: How old was he then?

THE WITNESS: We had a man who was 28 years old.

THE COURT: When you talked to Mr.Stott about Mr. Yamada in January of '71, did you call for the records of all of the accounts, whatever number they were, in your firm that Yamada had anything to do with?

THE WITNESS: Yes, sir.

THE COURT: Did you call for Dr. Rolf's?

THE WITNESS: I asked Mike if he knew any other accounts that Yamada had anything to --

THE COURT: I didn't ask you that. Did you call for Dr. Rolf's records. Undoubtedly Mr.Stott told you that one of the accounts there at the firm was Dr. Rolf's.

THE WITNESS: Yes.

THE COURT: Did you call for the records so you could review the trade and all the information and all the statements, how many commissions had been earned, what volume of business, what the turnover was? Did you do that at the time,having heard about or indeed having seen the Armstrpng complaint?

THE WITNESS: What I reviewed was the customer's portfolio.

THE COURT: Including Dr. Rolf's?

THE WITNESS: Yes, sir.

THE COURT: You became aware at that time of Mr.Sterling's involvement previously in the case.

THE WITNESS: Yes, sir.

THE COURT: When I say "in the case," I mean in the account.

THE WITNESS: In the account handling.

THE COURT: And you saw what the trading had been the kind of securities which were in the portfolio when Sterling had it and what happened thereafter, in whatever way, is that correct?

THE WITNESS: Yes, sir.

THE COURT: When you ran down the list of trades which had occurred after Yamada came into the situation, and knowing that Yamada had built his record at Kuhn, Loeb, a very conservative investment firm, did you find what had happened in the Rolf account consistent with what you understood the reputation of Yamada to be, based on what you heard about his performance at Kuhn Loeb?

THE WITNESS: Yamada's situation at Kuhn, Loeb was in the area of making recommendations for venture capital investments for the firm. Kuhn, Loeb being an old line conservative firm was a very active venture capital firm and was doing a lot of venture capital work during that period of time. Many of these ideas were going down the tubes and many of these ideas were very profitable for all firms that were old line firms at that time.

When I saw the activity in the accounts that Yamada had generated and the position in the account, there were stocks that I had seen in the newspapers that had big runups quickly, that I recognized in talking to my contemporaries as being hot issues, and that I knew of no other problem with. If the problems came after that, as related to some of these stocks, I was not aware that the long position in Dr. Rolf's account at the time I looked at it, in January '71. There were no stocks in the account at that time that I recall being a problem. I do recall in looking at the customer portfolio that there were stocks that had had subsequent problems to his purchase and sale.

The Health Evaluation, I believe, was one of them. But, that was happening all over Wall Street. Peopl were coming in with all kinds of ideas. They wanted to buy new issue and sell it and they were buying and selling at a profit. Subsequent to that the SEC was coming in, making inquiries of firms and they were voluminous. They would get eight inquiries a day. trading information of companies we never heard of that we may have done one or two or three trades in.

THE COURT: Were you aware in January of 1971 of SEC interest in some of these hot stocks?

THE WITNESS: No, sir, not of these accounts.

THE COURT: What about Health Evaluation?

THE WITNESS: No, I can't say I was aware at that time.

THE COURT: You were aware before January of '71 that there was concern at theSEC and the United States Attorney's office about market manipulation and so forth, isn't that so?

THE WITNESS: I certainly was.

THE COURT: Weren't you at least suspicious when you saw some of these unknown stocks suddenly taking off, shooting up, just looking at who was participating in the trading, who was making the market and so forth? Wasn't there concern on your part by virtue of your experience with the SEC and with this firm?

THE WITNESS: The known marketmakers, the suspect marketmakers in my experience with the SEC were put on a surveillance list and those marketmakers, those concerns if they were active in trading in stocks that we became aware of, we put those stocks on our "no buy, no sell list. That was the procedure that I could use. I could only try to prevent that which was happening through the gut reaction I discussed with Mr.Silverman.

THE COURT: Back to this turnover bid. I presented a question to you which contemplated seven turnovers a year, say, in 1970, in the plaintiff's account.

I am now talking about a situation where the orders for the trading were placed through Eastman Dillon. That doesn't change your answer in any way, does it? You would still testify, I gather, that if a money manager was involved, what would happen is, you would call in Eastman Dillon's registered representative and ask him to take a look at the matter, whether or not it warranted to get in touch with the investment advisor and find out what the investment advisor's objectives were? I want to make clear you understand my question was not addressed to a situation where the movement of securities into a client's account involved stocks which were purchased in some other firms, even though placed in your firm's account for custodial purposes.

THE WITNESS: Your Honor, in 1969, 1970, we -- when I say "we," the compliance directors who talked to each other continually about what do we do, what do we do, and we were trying to devise surveillance procedures as the day and the week went on and the industry changed. There was absolutely no question that we would not question an account like that where these money managers came in and were trading the accounts of clients, where they were trading it and getting compensated for the activity that they were generating. They could lose on six issues in a row and then hit one issue and make a guy a million dollars.

THE COURT: When you say they could lose --

THE WITNESS: The money managers.

THE COURT: So you stayed out pretty much, recognizing that these were the economics of the thing, is that it?

THE WITNESS: Yes, it was a speculative --

THE COURT: You are talking about the 1969, 1970 period. You have referred generally to the conditions at that time. Would you give us a brief word on the conditions at that time in the market here. You have spoken of the market changing. Tell us a little bit what you mean by that. Changed in what ways?

THE WITNESS: Well, generally the marketplace didn't have the influx of new companies that had come about in late '68 through '69, into '70. The successful market there was in '66, '67, '68 and it was a bullish market for the most part, created new service companies, computer-type companies, created an atmosphere where people went into business with no assets, with just an idea, with a cagey name, and they brought the issue public through an underwriter and underwriters were being created every day, new brokerage firms were being created as underwriters, venture capital firms and some of these stocks were just not going anywhere or some of them were quickly going up and then collapsing because they didn't have the manageme background or whatever the reason was, or money got a little tighter and as money got tighter, a lot of the operation which were high leverage didn't succeed, but that '69 period was an introductory period to just literally hundreds of names.

We got hot issue questionnaires form the NASD. In 1969, they used to query any issue that had a premium on the day it came to market, the hot issues. We would get about three a week just on the issues we were involved with, and that was just a scintilla of what was going on in the low-price type offerings.

Our offerings were not at the two to five dollar range. We were bringing companies out at 16, which some of them opened trading at 40, some of the stocks that were five, were opening at eight and ten.

THE COURT: Any more of this witness?

MR. KELLY: I wonder, your Honor, if we could have luncheon recess.

THE COURT: We will resume at 2:15.

Step down.

(Luncheon recess.)

AFTERNOON SESSION
2:25 P.M.

JOHN P. CIONE resumed.

MR. KELLY: I have no further questions, your Honor.

THE COURT: If there are no further questions of this witness, step down, sir.

(Witness excused.)

MR. KELLY: I would like to offer, your Honor, Defendants' Exhibits G, I, Y and U.

With regard,your Honor, to Exhibits G and I, they have been the subject of the stipulation as to authenticity, and the only issue is as to their relevance.

I have them here, Mr.Silverman, if you want to look at them.

MR. SILVERMAN: Thank you.

I don't object, your Honor, to G, I, or U. I do object to Y on the ground of relevance. It concerns a subsequent account that Dr. Rolf had at Oppenheim & Company after the period. It is not involved in this lawsuit, and I odn't see how it can at all be germane to any of the issues in this case.

MR. KELLY: I say, your Honor, what Mr. Silverman says is correct as respects the time of the account. But, the account deals with respect to the securities or some of the securities which are subject to the claims made

* * *

Service of One Copy [redacted] of the within APPENDIX is hereby admitted this 18th day of APRIL 1977

Signed ______________________

Attorney for DEFENDANTS-APPELLEES
CROSS-APPELLANTS

COPY RECEIVED BY

APR 18 1977

BREED, ABBOTT & MORGAN

ATTY'S FOR: Blyth Eastman Dillon
+ Michael Steil

307 BAR PRESS, Inc., 132 Lafayette St., New York 10013 – 966-3906

(6046)